

less such individual is a career employee in the civil service.

(B) For the purpose of subparagraph (A), “career employee in the civil service” shall have such meaning as the Attorney General, in consultation with the Director of the Office of Personnel Management, by regulation prescribes.

(c) The President, based on the recommendations of the Attorney General, may award ranks to members of the FBI–DEA Senior Executive Service in a manner consistent with the provisions of section 4507.

(d) Notwithstanding any other provision of this section, the Attorney General may detail or assign any member of the FBI–DEA Senior Executive Service to serve in a position outside the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) in which the member’s expertise and experience may be of benefit to the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) or another Government agency. Any such member shall not by reason of such detail or assignment lose any entitlement or status associated with membership in the FBI–DEA Senior Executive Service.

(e) The Attorney General shall each year submit to Congress, at the time the budget is submitted by the President to the Congress for the next fiscal year, a report on the FBI–DEA Senior Executive Service. The report shall include, in the aggregate and by agency—

(1) the number of FBI–DEA Senior Executive Service positions established as of the end of the preceding fiscal year;

(2) the number of individuals being paid at each rate of basic pay for the FBI–DEA Senior Executive Service as of the end of the preceding fiscal year;

(3) the number, distribution, and amount of awards paid to members of the FBI–DEA Senior Executive Service during the preceding fiscal year; and

(4) the number of individuals removed from the FBI–DEA Senior Executive Service during the preceding fiscal year—

(A) for less than fully successful performance;

(B) due to a reduction in force; or

(C) for any other reason.

(Added Pub. L. 100–325, §1(a), May 30, 1988, 102 Stat. 579; amended Pub. L. 101–194, title V, §506(b)(1), Nov. 30, 1989, 103 Stat. 1758.)

REFERENCES IN TEXT

Provisions of this title governing appointments and other personnel actions in the competitive service, referred to in subsec. (b)(1)(B), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

1989—Subsec. (a)(5)(E). Pub. L. 101–194 added subpar. (E).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 506(d) of Pub. L. 101–194 provided that: “The amendments made by this section [enacting section 3393a of this title and amending this section, sections 3393, 3592 to 3594, 7701, 8336, 8339, 8414, and 8421 of this title, section 1601 of Title 10, Armed Forces, section 3945 of Title 22, Foreign Relations and Intercourse, and provisions set out as a note under section 402 of Title

50, War and National Defense] shall take effect on January 1, 1991.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5304, 5376 of this title.

§ 3152. Limitation on pay

Members of the FBI–DEA Senior Executive Service shall be subject to the limitation under section 5307.

(Added Pub. L. 100–325, §1(a), May 30, 1988, 102 Stat. 581; amended Pub. L. 102–378, §2(9), Oct. 2, 1992, 106 Stat. 1347.)

AMENDMENTS

1992—Pub. L. 102–378 amended section generally. Prior to amendment, section read as follows: “Nothing in this subchapter shall be construed to allow the aggregate amount payable to a member of the FBI–DEA Senior Executive Service under this subchapter during any fiscal year to exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such year. This section shall be applied in a manner consistent with paragraphs (1) and (2) of section 5383(b).”

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

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3397. Regulations.

AMENDMENTS

1995—Pub. L. 104-52, title IV, §4(2), Nov. 19, 1995, 109 Stat. 490, redesignated item 3329 “Government-wide list of vacant positions” as item 3330.

¹ So in original. Does not conform to section catchline.

1993—Pub. L. 103-94, §8(b), Oct. 6, 1993, 107 Stat. 1007, substituted “Political recommendations” for “Competitive service; recommendations of Senators or Representatives” in item 3303.

1992—Pub. L. 102-484, div. A, title V, §544(b), div. D, title XLIV, §4431(b), Oct. 23, 1992, 106 Stat. 2415, 2720, added two items 3329.

Pub. L. 102-378, §2(13)(B), Oct. 2, 1992, 106 Stat. 1347, struck out item 3342 “Federal participants in executive exchange programs”.

1990—Pub. L. 101-509, title V, §529 [title I, §101(b)(9)(C)(iii)], Nov. 5, 1990, 104 Stat. 1427, 1441, substituted “Appointments to positions classified above GS-15” for “Appointments at GS-16, 17, and 18” in item 3324.

Pub. L. 101-416, §2(a)(2), Oct. 12, 1990, 104 Stat. 903, added item 3342.

1989—Pub. L. 101-194, title V, §506(a)(2), Nov. 30, 1989, 103 Stat. 1758, added item 3393a.

Pub. L. 101-12, §5(b), Apr. 10, 1989, 103 Stat. 33, added item 3352.

1988—Pub. L. 100-398, §7(a)(3), Aug. 17, 1988, 102 Stat. 988, inserted “agency” after “Executive” in item 3345.

1985—Pub. L. 99-145, title XVI, §1622(a)(2), Nov. 8, 1985, 99 Stat. 777, added item 3328.

1979—Pub. L. 96-54, §2(a)(13), Aug. 14, 1979, 93 Stat. 382, struck out item 3315a “Registers; individuals receiving compensation for work injuries”.

1978—Pub. L. 95-454, title III, §§303(b), 307(h)(2), 309(b), title IV, §403(b), title IX, §906(c)(4), Oct. 13, 1978, 92 Stat. 1146, 1149, 1152, 1165, 1227, substituted “probationary period” for “probation; period of” in item 3321, struck out item 3319 “Competitive service; selection; members of family restriction”, added items 3327 and 3391 to 3397, and struck out items 3391 to 3398.

Pub. L. 95-437, §3(b), Oct. 10, 1978, 92 Stat. 1058, added heading for subchapter VII and items 3391 to 3398.

Pub. L. 95-256, §5(b)(2), Apr. 6, 1978, 92 Stat. 191, struck out item 3322 “Competitive service; temporary appointments after age 70”.

Pub. L. 95-251, §2(c)(3), Mar. 27, 1978, 92 Stat. 184, substituted “administrative law judges” for “hearing examiners” in item 3344.

Pub. L. 95-228, §2(a), Feb. 10, 1978, 92 Stat. 25, struck out item 3306 “Competitive service; departmental service; apportionment”.

1975—Pub. L. 94-183, §2(7), Dec. 31, 1975, 89 Stat. 1057, struck out item 3364 “Promotion; substitute employees in the postal field service”.

1972—Pub. L. 92-297, §§2(b), 3(b), May 16, 1972, 86 Stat. 142, 144, substituted “maximum age entrance requirements, exceptions” for “maximum age requirement; restriction on use of appropriated funds” in item 3307, and added subchapter VII and items 3381 to 3385.

1971—Pub. L. 91-648, title IV, §402(b), Jan. 5, 1971, 84 Stat. 1925, added heading for subchapter VI and items 3371 to 3376.

1970—Pub. L. 91-375, §6(c)(7)(B), Aug. 12, 1970, 84 Stat. 776, struck out item 3327 “Postmasters; standards for determination of qualifications”.

1967—Pub. L. 90-105, §1(b), Oct. 11, 1967, 81 Stat. 273, added item 3304a.

Pub. L. 90-83, §1(9)(B), Sept. 11, 1967, 81 Stat. 197, added item 3315a.

1966—Pub. L. 89-762, §1(b), Nov. 5, 1966, 80 Stat. 1312, struck out item 3342 “Details; field to departmental service prohibited”.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 31 section 3801; title 42 sections 290aa, 2297b-4.

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 10 section 1744; title 16 section 3198; title 38 section 7403.

§ 3301. Civil service; generally

The President may—

(1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;

(2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and

(3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 417.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 631 (less last 16 words).	R.S. §1753 (less last 16 words).

The words "civil service in the executive branch" are substituted for "civil service of the United States" to confirm the grant of authority in view of the definition of "civil service" in section 2101. The word "will" is substituted for "may". The words "for the employment sought" are substituted for "for the branch of service into which he seeks to enter" as the latter are archaic since there are no "branches" within the executive branch. The word "applicant" is substituted for "candidate".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102-175, §1, Dec. 2, 1991, 105 Stat. 1222, provided that: "This Act [amending sections 3395, 3396, 5383, and 7701 of this title] may be cited as the 'Senior Executive Service Improvements Act'."

TEMPORARY MEASURES TO FACILITATE REEMPLOYMENT OF CERTAIN DISPLACED FEDERAL EMPLOYEES

Pub. L. 102-484, div. D, title XLIV, §4432, Oct. 23, 1992, 106 Stat. 2720, provided that:

"(a) DEFINITIONS.—For the purpose of this section—

"(1) the term 'agency' means an Executive agency (as defined by section 105 of title 5, United States Code), excluding the General Accounting Office and the Department of Defense; and

"(2) the term 'displaced employee' means any individual who is—

"(A) an employee of the Department of Defense who has been given specific notice that such employee is to be separated due to a reduction in force; or

"(B) a former employee of the Department of Defense who was involuntarily separated therefrom due to a reduction in force.

"(b) METHOD OF CONSIDERATION.—In accordance with regulations which the Office of Personnel Management shall prescribe, consistent with otherwise applicable provisions of law, an agency shall, in filling a vacant position for which a qualified displaced employee has applied in timely fashion, give full consideration to the application of the displaced employee before selecting any candidate from outside the agency for the position.

"(c) LIMITATION.—A displaced employee is entitled to consideration in accordance with this section for the 24-month period beginning on the date such employee receives the specific notice referred to in subsection (a)(2)(A), except that, if the employee is separated pursuant to such notice, the right to such consideration shall continue through the end of the 24-month period beginning on the date of separation.

"(d) APPLICABILITY.—(1) This section shall apply to any individual who—

"(A) became a displaced employee within the 12-month period ending immediately before the date of the enactment of this Act [Oct. 23, 1992]; or

"(B) becomes a displaced employee on or after the date of the enactment of this Act and before October 1, 1997.

"(2) In the case of a displaced employee described in paragraph (1)(A), for purposes of computing any period of time under subsection (c), the date of the specific notice described in subsection (a)(2)(A) (or, if the employee was separated as described in subsection (a)(2)(B) before the date of enactment of this Act, the date of separation) shall be deemed to have occurred on such date of enactment.

"(3) Nothing in this section shall be considered to apply with respect to any position—

"(A) which has been filled as of the date of enactment of this Act; or

"(B) which has been excepted from the competitive service because of its confidential, policy-determining, policy-making or policy-advocating character."

NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE

Pub. L. 101-363, Aug. 14, 1990, 104 Stat. 424, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'National Advisory Council on the Public Service Act of 1990'.

"SEC. 2. FINDINGS.

"The Congress finds that—

"(1) recognition of the services rendered by Federal employees (hereinafter in this Act referred to as 'national public service') should be accorded a high and continuing place on the national agenda;

"(2) the National Commission on the Public Service, through its good works, has documented the need for greater advocacy on behalf of those performing national public service;

"(3) although public service is an honorable profession, members of the public do not always perceive it favorably;

"(4) serious obstacles often hinder the Government's efforts to recruit and retain the best and the brightest for national public service;

"(5) just as the public has a right to expect Federal employees to adhere to the highest standards of excellence and ethicality, so Federal employees have a right to expect an atmosphere of trust and respect, and a sense of accomplishment from their work; and

"(6) an advisory council is needed to provide the President and the Congress with bipartisan, objective assessments of, and recommendations concerning, the Federal workforce.

"SEC. 3. ESTABLISHMENT.

"There shall be established a council to be known as the National Advisory Council on the Public Service (hereinafter in this Act referred to as the 'Council').

"SEC. 4. FUNCTIONS.

"The Council shall—

"(1) regularly assess the state of the Federal workforce;

"(2) in conjunction with the President, the Congress, and the Judiciary, seek to attract individuals of the highest caliber to careers involving national public service, and encourage them and others of similar distinction who are already part of the Federal workforce to make a continuing commitment to national public service;

"(3) promote better public understanding of the role of Federal employees in implementing Government programs and policies, and otherwise seek to improve the public perception of Federal employees;

"(4) encourage efforts to build student interest in performing national public service (whether those efforts are undertaken at the community level, in the classroom, or otherwise); and

"(5) develop methods for improving motivation and excellence among Federal employees.

"SEC. 5. MEMBERSHIP.

"(a) NUMBER AND APPOINTMENT.—The Council shall be composed of 15 members as follows:

“(1) 2 Members of the Senate, 1 of whom shall be appointed by the majority leader of the Senate and the other of whom shall be appointed by the minority leader of the Senate.

“(2) 2 Members of the House of Representatives, 1 of whom shall be appointed by the Speaker of the House of Representatives and the other of whom shall be appointed by the minority leader of the House of Representatives.

“(3) The Director of the Administrative Office of the United States Courts (or his delegate).

“(4) 10 individuals appointed by the President—

“(A) 4 of whom shall be chosen from among officers serving in the executive branch;

“(B) 1 of whom shall be chosen from among career employees in the civil service;

“(C) 1 of whom shall be a Federal employee who is a member of a labor organization (as defined by section 7103(a)(4) of title 5, United States Code); and

“(D) 4 of whom shall be chosen from among members of the public who do not hold any Government office or position.

“(b) CONTINUATION OF MEMBERSHIP.—If any member of the Council whose appointment is based on that individual's holding a Government office or position leaves such office or position, or if any member of the Council under subsection (a)(4)(D) is appointed or elected to a Government office or position, that individual may continue to serve as such a member for not longer than the 90-day period beginning on the date of leaving that office or position, or entering into that office or position, as the case may be.

“(c) TERMS.—Members of the Council shall be appointed for the life of the Council.

“(d) VACANCIES.—A vacancy in the Council shall be filled in the manner in which the original appointment was made.

“(e) COMPENSATION.—(1) Members of the Council shall not be entitled to pay (or, in the case of members holding any Government office or position, pay in addition to any to which they are otherwise entitled for service in such office or position) by virtue of membership on the Council.

“(2) While serving away from their homes or regular places of business in the performance of duties for the Council, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in Government service.

“(f) QUORUM.—Eight members of the Council shall constitute a quorum.

“(g) CHAIRMAN.—The Chairman of the Council shall be designated by the President from among the members appointed under subsection (a)(4)(D).

“(h) MEETINGS.—The Council shall meet at the call of the Chairman or a majority of its members, and shall meet on at least a quarterly basis.

“SEC. 6. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

“(a) DIRECTOR.—With the approval of the Council, the Chairman may appoint a Director and fix the pay of such Director at a rate not to exceed the rate for level IV of the Executive Schedule [5 U.S.C. 5315]. The Director shall be a person who, by reason of demonstrated ability in the area of management, government, or public administration, is especially well qualified to serve.

“(b) STAFF.—With the approval of the Chairman, the Director may appoint and fix the pay of such personnel as may be necessary to carry out the functions of the Council. The staff of the Council shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

“(c) EXPERTS AND CONSULTANTS.—The Council may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, but at rates

for individuals not to exceed the daily equivalent of the maximum rate payable under the General Schedule.

“(d) STAFF OF FEDERAL AGENCIES.—Upon the request of the Chairman, the head of a Federal agency may detail, on a reimbursable or nonreimbursable basis, any personnel of such agency to the Council to assist the Council in carrying out its functions under this Act.

“SEC. 7. POWERS.

“(a) MAILS.—The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

“(b) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Council, on a reimbursable basis, such administrative support services as the Council may request.

“(c) OFFICIAL DATA.—The Council may secure directly from any Federal agency information necessary to carry out its functions under this Act. Each such agency is authorized and directed to furnish, to the extent permitted by law, any information requested by the Council.

“(d) GIFTS.—The Council—

“(1) may accept money and other property donated, bequeathed, or devised to the Council without condition or restriction (other than that it be used to carry out the work of the Council); and

“(2) may use, sell, or otherwise dispose of any such property to carry out its functions under this Act, except that, upon the termination of the Council, any such property shall be disposed of in accordance with applicable provisions of law governing the disposal of Federal property.

“SEC. 8. REPORTS.

“The Council shall transmit to the President and each House of the Congress—

“(1) within 1 and 2 years, respectively, after the date on which the Council first meets, reports containing its preliminary findings and recommendations; and

“(2) within 3 years after the date on which the Council first meets, a final report containing a detailed statement of the findings and conclusions of the Council, together with its recommendations for such legislation or administrative actions as it considers appropriate.

“SEC. 9. COMMENCEMENT; TERMINATION.

“(a) COMMENCEMENT.—Appointments under section 5 shall be made, and the Council shall first meet, within 90 days after the date of the enactment of this Act [Aug. 14, 1990].

“(b) TERMINATION.—The Council shall cease to exist upon transmitting its final report under section 8(2).

“SEC. 10. AUTHORIZATION.

“There is authorized to be appropriated such sums as may be necessary to carry out this Act.”

EX. ORD. NO. 8743. EXTENDING THE CLASSIFIED CIVIL SERVICE

Ex. Ord. No. 8743, Apr. 23, 1941, as amended by Ex. Ord. No. 9230, Aug. 20, 1942; Ex. Ord. No. 9678, Jan. 14, 1946; Ex. Ord. No. 9712, Apr. 13, 1946; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 1 of the act of November 26, 1940, entitled “Extending the Classified Executive Civil Service of the United States” (54 Stat. 1211), by the Civil Service Act (22 Stat. 403), and by section 1753 of the Revised Statutes of the United States [sections 3301 and 7301 of this title], it is hereby ordered as follows:

SECTION 1. All offices and positions in the executive civil service of the United States except (1) those that are temporary, (2) those expressly excepted from the provisions of section 1 of the said act of November 26, 1940, (3) those excepted from the classified service under Schedules A and B of the Civil Service Rules, and (4) those which now have a classified status, are hereby covered into the classified civil service of the Government.

SECTION 2. Section 1 of this order shall become effective on January 1, 1942, except that as to positions affected thereby which are vacant at any time after June 30, 1941, and before January 1, 1942, it shall become effective when the vacancies first exist during such period, and appointments to such vacant positions shall be made in accordance with the Civil Service Rules as amended by section 3 of this order, unless prior express permission is given by the Office of Personnel Management for appointment without regard thereto.

SECTION 3. (a) Upon consideration of the report of the Committee on Civil Service Improvement (House Document No. 118, 77th Congress) appointed by Executive Order No. 8044 of January 31, 1939, it is hereby found and determined that the regulations and procedures hereinafter prescribed in this section with respect to attorney positions in the classified civil service are required by the conditions of good administration.

(b) There is hereby created in the Office of Personnel Management (hereinafter referred to as the Office) a board to be known as the Board of Legal Examiners (hereinafter referred to as the Board). The Board shall consist of the Solicitor General of the United States and the chief law officer of the Office of Personnel Management, as members *ex officio*, and nine members to be appointed by the President, four of whom shall be attorneys chosen from the chief officers of the Executive departments, agencies or corporate instrumentalities of the Government, two from the law-teaching profession, and three from attorneys engaged in private practice. The President shall designate the chairman of the Board. Five members shall constitute a quorum, and the Board may transact business notwithstanding vacancies thereon. Members of the Board shall receive no salary as such, but shall be entitled to necessary expenses incurred in the performance of their duties hereunder.

(c) It shall be the duty of the Board to promote the development of a merit system for the recruitment, selection, appointment, promotion, and transfer of attorneys in the classified civil service in accordance with the general procedures outlined in Plan A of the report of the Committee on Civil Service Improvement, appointed by Executive Order No. 8044 of January 31, 1939.

(d) The Board, in consultation with the Office, shall determine the regulations and procedures under this section governing the recruitment and examination of applicants for attorney positions, and the selection, appointment, promotion and transfer of attorneys, in the classified service.

(e) The Office shall in the manner determined by the Board establish a register or registers for attorney positions in the classified service and such positions shall thereafter be filled from such registers as are designated by the Board. Unless otherwise determined by the Board, any register so established shall not be in effect for a period longer than one year from the date of its establishment. Upon request of the Board, the Office shall appoint regional or local boards of examiners composed of persons approved by the Board, within or without the Federal service, to interview and examine applicants as the Board shall direct.

(f) The number of names to be placed upon any register of eligibles for attorney positions shall be limited to the number recommended by the Board; and such registers shall not be ranked according to the ratings received by the eligibles, except that persons entitled to veterans' preference as defined in section 1 of Civil Service Rule VI shall be appropriately designated thereon.

(g) Any person whose name has been placed upon three registers of eligibles covering positions of the same grade, and who has not been appointed therefrom, shall not thereafter be eligible for placement upon any subsequently established register covering positions of such grade.

(h) So far as practicable and consistent with good administration, the eligibles on any register for attorney positions and appointments for such register shall be apportioned among the several States and Territories

and the District of Columbia upon the basis of population as ascertained in the last preceding census. The Office shall certify to the appointing officer for each vacancy all the eligibles on the appropriate register except those whose appointment would, in the determination of the Board, be inconsistent with the apportionment policy herein prescribed. The appointing officer shall make selections for any vacancy or vacancies in attorney positions from the register so certified, with sole reference to merit and fitness.

(i) Any position affected by this section may be filled before appropriate registers have been established pursuant to this section only by a person whose appointment is approved by the Board. The Board may require as a condition of its approval that persons thus proposed for appointment pass a noncompetitive examination and may designate examining committees composed of persons within or without the Federal service to conduct such examinations. Persons whose appointment was approved by the Board prior to March 16, 1942, and who pass a noncompetitive examination prescribed by the Board shall be eligible for a classified civil-service status after the expiration of six months from the date of appointment upon compliance with the provisions of Section 6 of Civil Service Rule II other than those provisions relating to examination. Effective March 16, 1942, all appointments to attorney and law clerk (trainee) positions shall be for the duration of the present war and for six months thereafter unless specifically limited to a shorter period.

(j) The incumbent of any attorney position covered into the classified service by section 1 of this order may acquire a classified civil-service status in accordance with the provisions of Section 2(a) of the act of November 26, 1940 (54 Stat. 1211) or, in the discretion of the Board and when applicable, Section 6, of Civil Service Rule II: *Provided*, That the noncompetitive examination required thereunder shall be prescribed by the Office with the approval of the Board.

(k) The Office with the approval of the Board shall appoint a competent person to act as Executive Secretary to the Board; and the Office shall furnish such further professionals, clerical, stenographic, and other assistants as may be necessary to carry out the provisions of this section.

(l) The Civil Service Rules are hereby amended to the extent necessary to give effect to the provisions of this section.

SECTION 4. The noncompetitive examinations prescribed pursuant to sections 3 and 6 of this order and section 2(a) of the said act of November 26, 1940, shall, among other things, require any person taking such examination to meet such reasonable standards of physical fitness and personal suitability as the Office of Personnel Management may prescribe.

SECTION 5. Persons who on the effective date of section 1 of this order are on furlough or leave without pay from any position covered into the classified service by that section may be recalled to duty within one year of the date that they are furloughed or given leave without pay, and may be continued in such positions thereafter but shall not thereby acquire a classified civil-service status. If they are not recalled to duty within the time specified herein, they shall be separated from the service.

SECTION 6. (a) Any person who, in order to perform active service with the military or naval forces of the United States, has left a position (other than a temporary position) which is covered into the classified civil service under section 1 of this order, shall be reinstated in such position or to a position of like seniority, status, and pay in the same department or agency, and may, upon reinstatement, acquire a classified civil-service status: *Provided*, (1) that he has been honorably discharged from the military or naval service, (2) that he makes application for reinstatement within 90 days after termination of his service with the armed forces or of hospitalization continuing after discharge for a period of not more than one year, and (3) that he qualifies in such suitable noncompetitive examination as the Office may prescribe.

(b) Any person who, in order to perform active service with the military or naval forces of the United States, has left a position in any department or agency (other than a temporary position) which is covered into the classified civil service under section 1 of this order, may, upon his applications and upon the request of the head of the same or any other department or agency, be reinstated in any position for which the Office finds he is qualified, and upon reinstatement shall acquire a classified civil-service status: *Provided*, (1) that he has been honorably discharged from the military or naval service, and (2) that he qualifies in such suitable non-competitive examination as the Office may prescribe.

SECTION 7. Executive Order No. 8044 of January 31, 1939, is hereby revoked so far as it applies to positions covered into the classified civil service by this order.

EXECUTIVE ORDER No. 9367

Ex. Ord. No. 9367, Aug. 4, 1943, 8 F.R. 11017, which prohibited, with certain exceptions, instructions of applicants for civil service and foreign service examinations by officers or employees of the government, was revoked by Ex. Ord. No. 11408, Apr. 25, 1968, 33 F.R. 6459.

EX. ORD. NO. 10577. CIVIL SERVICE RULES

Ex. Ord. No. 10577, Nov. 22, 1954, 19 F.R. 7521, eff. Jan. 23, 1955, as amended by Ex. Ord. No. 10641, Oct. 26, 1955, 20 F.R. 8137; Ex. Ord. No. 10675, Aug. 21, 1956, 21 F.R. 6327 Jan. 23, 1956; Ex. Ord. No. 10745, Dec. 12, 1957, 22 F.R. 10025; Ex. Ord. No. 10869, Mar. 9, 1960, 25 F.R. 2073; Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14729; Ex. Ord. No. 11839, Feb. 15, 1975, 40 F.R. 7351; Ex. Ord. No. 11856, May 7, 1975, 40 F.R. 20259; Ex. Ord. No. 11887, Nov. 4, 1975, 40 F.R. 51411; Ex. Ord. No. 11935; Sept. 2, 1976, 41 F.R. 37301; Ex. Ord. No. 12021, Nov. 30, 1977, 42 F.R. 61237; Ex. Ord. No. 12043, Mar. 7, 1978, 43 F.R. 9773; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12125, Mar. 15, 1979, 44 F.R. 16879; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12300, Mar. 23, 1981, 46 F.R. 18683; Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521; Ex. Ord. No. 12896, Feb. 3, 1994, 59 F.R. 5515; Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519, provided:

PART I—CIVIL SERVICE RULES

SECTION 101. The Civil Service Rules are hereby amended to read as follows:

RULE I—COVERAGE AND DEFINITIONS

§1.1. POSITIONS AND EMPLOYEES AFFECTED BY THESE RULES

These Rules shall apply to all positions in the competitive service and to all incumbents of such positions. Except as expressly provided in the Rule concerned, these Rules shall not apply to positions and employees in the excepted service.

§1.2. EXTENT OF THE COMPETITIVE SERVICE

The competitive service shall include: (a) All civilian positions in the executive branch of the Government unless specifically excepted therefrom by or pursuant to statute or by the Office of Personnel Management (hereafter referred to in these Rules as the Office) under section 6.1 of Rule VI; and (b) all positions in the legislative and judicial branches of the Federal Government and in the Government of the District of Columbia which are specifically made subject to the civil-service laws by statute. The Office is authorized and directed to determine finally whether a position is in the competitive service.

§1.3. DEFINITIONS

As used in these Rules:

(a) "Competitive service" shall have the same meaning as the words "classified service", or "classified (competitive) service", or "classified civil service" as defined in existing statutes and executive orders.

(b) "Competitive position" shall mean a position in the competitive service.

(c) "Competitive status" shall mean basic eligibility to be noncompetitively selected to fill a vacancy in a competitive position. A competitive status shall be acquired by career-conditional or career appointment through open competitive examination upon satisfactory completion of a probationary period, or may be granted by statute, executive order, or the Civil Service Rules without competitive examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted without taking an open competitive examination, subject to the conditions prescribed by the Civil Service Rules and Regulations.

(d) An employee shall be considered as being in the competitive service when he has a competitive status and occupies a competitive position unless he is serving under a temporary appointment: *Provided*, That an employee who is in the competitive service at the time his position is first listed under Schedule A, B, or C shall be considered as continuing in the competitive service as long as he continues to occupy such position.

(e) "Tenure" shall mean the period of time an employee may reasonably expect to serve under his current appointment. Tenure shall be granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is to a competitive position or an excepted position.

§1.4. EXTENT OF THE EXCEPTED SERVICE

(a) The excepted service shall include all civilian positions in the executive branch of the Government which are specifically excepted from the requirements of the Civil Service Act or from the competitive service by or pursuant to statute or by the Office under section 6.1 of Rule VI.

(b) "Excepted service" shall have the same meaning as the words "unclassified service", or "unclassified civil service", or "positions outside the competitive civil service" as used in existing statutes and executive orders.

(c) "Excepted position" shall have the same meaning as "unclassified position", or "position excepted by law", or "position excepted by executive order", or "position excepted by Civil Service Rule", or "position outside the competitive service" as used in existing statutes and executive orders.

RULE II—APPOINTMENT THROUGH THE COMPETITIVE SYSTEM

§2.1. COMPETITIVE EXAMINATIONS AND ELIGIBLE REGISTERS

(a) The Office shall be responsible for open competitive examinations for admission to the competitive service which will fairly test the relative capacity and fitness of the persons examined for the position to be filled. The Office is authorized to establish standards with respect to citizenship, age, education, training and experience, suitability, and physical and mental fitness, and for residence or other requirements which applicants must meet to be admitted to or rated in examinations.

(b) In addition to the names of persons who qualify in competitive examinations, the names of persons who have lost eligibility on a career or career-conditional register because of service in the armed forces, and the names of persons who lost opportunity for certification or who have served under career or career-conditional appointment when the Office determines that they should be given certification, may also be entered at such places on appropriate registers and under such conditions as the Office may prescribe.

(c) Whenever the Office of Personnel Management (1) is unable to certify a sufficient number of names to permit the appointing officer to consider three eligibles for appointment to a fourth-class postmaster position in accordance with the regular procedure, or (2) finds that a particular rate of compensation for fourth-class

postmaster positions is too low to warrant regular competitive examinations for such positions, it may authorize appointment to any such position or positions in accordance with such procedure as may be prescribed by the Office. Persons appointed under this subsection may acquire competitive status subject to satisfactory completion of a probationary period prescribed by the Office.

§2.2. APPOINTMENTS

(a) The Office shall establish and administer a career-conditional appointment system for positions subject to competitive examination which will permit adjustment of the career service to necessary fluctuations in Federal employment, and provide an equitable and orderly system for stabilizing the Federal work force. A competitive status shall be acquired by a career-conditional appointee upon satisfactory completion of a probationary period, but the appointee shall have career-conditional tenure for a period of service to be prescribed by regulation of the Office. When an employee has completed the required period of service his appointment shall be converted to a career appointment without time limitation: *Provided*, That his career-conditional appointment shall not be converted to a career appointment if the limitation on the number of permanent employees in the Federal civil service established under subsection (b) of this section would be exceeded thereby. Persons selected from competitive civil service registers for other than temporary appointment shall be given career-conditional appointments: *Provided*, That career appointments shall be given to the following classes of eligibles: (1) Persons whose appointments are required by statute to be made on a permanent basis; (2) employees serving under career appointments at the time of selections from such registers; (3) former employees who have eligibility for career appointments upon reinstatement; and (4) to the extent permitted by law, persons appointed to positions in the field service of the Post Office Department for which salary rates are fixed by the act of July 6, 1945, 59 Stat. 435, as heretofore or hereafter amended and supplemented.

(b) Under the career-conditional appointment system there shall be a limit on the number of permanent employees in the Federal civil service which shall be the ceiling established by section 1310 of the Supplemental Appropriation Act, 1952 (65 Stat. 757), as amended [set out as a note under section 3101 of this title]. In the event section 1310, *supra*, is repealed, the Office is authorized to fix such limitation on the number of permanent employees in the Federal civil service as it finds necessary to meet the needs of the service.

(c) The Office may determine the types, duration, and conditions of indefinite and temporary appointments, and may prescribe the method for replacing persons holding such appointments.

§2.3. APPORTIONMENT

Subject to such modifications as the Office finds to be necessary in the interest of good administration, appointments to positions in agencies' headquarters offices which are located within the metropolitan area of Washington, D.C., shall be made so as to maintain the apportionment of appointments among the several States, Territories, and the District of Columbia upon the basis of population.

§2.4. PROBATIONARY PERIOD

Persons selected from registers of eligibles for career or career-conditional appointment and employees promoted, transferred, or otherwise assigned, for the first time, to supervisory or managerial positions shall be required to serve a probationary period under terms and conditions prescribed by the Office.

RULE III—NONCOMPETITIVE ACQUISITION OF STATUS

§3.1. CLASSES OF PERSONS WHO MAY NONCOMPETITIVELY ACQUIRE STATUS

(a) Upon recommendation by the agency concerned, and subject to such noncompetitive examination, time limits, or other requirements as the Office may prescribe, the following classes of persons may acquire a competitive status without competitive examination:

(1) A person holding a permanent position when it is placed in the competitive service by statute or executive order or is otherwise made subject to competitive examination.

(2) A disabled veteran who, in a manner satisfactory to the Office, has completed a course of training in the executive branch of the Government prescribed by the Administrator of Veterans' Affairs in accordance with the act of March 24, 1943, 57 Stat. 43.

(3) An employee who has served at least two years in the immediate office of the President or on the White House Staff and who is transferred to a competitive position at the request of an agency.

(4) An employee who was serving when his name was reached for certification on a civil-service register appropriate for the position in which he was serving: *Provided*, That the recommendation for competitive status is made prior to expiration of the register on which his name appears or is made during a period of continuous service since his name was reached: *Provided further*, That the register was being used for appointments conferring competitive status at the time his name was reached.

(b) Upon recommendation by the employing agency, and subject to such requirements as the Office of Personnel Management may prescribe, the following classes of handicapped employees may acquire competitive status without competitive examination:

(1) A severely physically handicapped employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

(2) A mentally retarded employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

§3.2. APPOINTMENTS WITHOUT COMPETITIVE EXAMINATION IN RARE CASES

Subject to receipt of satisfactory evidence of the qualifications of the person to be appointed, the Office may authorize an appointment in the competitive service without competitive examination whenever it finds that the duties or compensation of the position are such, or that qualified persons are so rare, that, in the interest of good civil-service administration, the position cannot be filled through open competitive examination. Any person heretofore or hereafter appointed under this section shall acquire a competitive status upon completion of at least one year of satisfactory service and compliance with such requirements as the Office may prescribe. Detailed statements of the reasons for the noncompetitive appointments made under this section shall be published in the Office's annual reports.

§3.3. CONVERSION OF APPOINTMENTS

Any person who acquires a competitive status under this Rule shall have his appointment converted to career-conditional appointment unless he meets the service requirement for career appointment prescribed under section 2.2 (a) of Rule II.

RULE IV—PROHIBITED PRACTICES

§4.1. [Revoked by Ex. Ord. No. 12896, Feb. 3, 1994, 59 F.R. 5515.]

§4.2. PROHIBITION AGAINST RACIAL, POLITICAL OR RELIGIOUS DISCRIMINATION

No person employed in the executive branch of the Federal Government who has authority to take or rec-

commend any personnel action with respect to any person who is an employee in the competitive service or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation or religious beliefs of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation or religious beliefs, except as may be authorized or required by law.

§4.3. PROHIBITION AGAINST SECURING WITHDRAWAL FROM COMPETITION

No person shall influence another person to withdraw from competition for any position in the competitive service for the purpose of either improving or injuring the prospects of any applicant for appointment.

RULE V—REGULATIONS, INVESTIGATIONS, EVALUATION, AND ENFORCEMENT

§5.1. CIVIL SERVICE REGULATIONS

The Director, Office of Personnel Management, shall promulgate and enforce regulations necessary to carry out the provisions of the Civil Service Act and the Veterans' Preference Act, as reenacted in Title 5, United States Code [now covered by this chapter and chapter 35 of this title], the Civil Service Rules, and all other statutes and Executive orders imposing responsibilities on the Office. The Director is authorized, whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulation, to grant a variation from the strict letter of the regulation if such a variation is within the spirit of the regulations, and the efficiency of the Government and the integrity of the competitive service are protected and promoted. Whenever a variation is granted the Director shall note the official record to show: (1) the particular practical difficulty or hardship involved, (2) what is permitted in place of what is required by regulation, (3) the circumstances which protect or promote the efficiency of the Government and the integrity of the competitive service, and (4) a statement limiting the application of the variation to the continuation of the conditions which gave rise to it. Like variations shall be granted whenever like conditions exist. All such decisions and information concerning variations noted in the official record shall be published promptly in a Federal Personnel Manual, Letter or Bulletin and in the Director's next annual report.

§5.2. INVESTIGATION AND EVALUATIONS

The Director may secure effective implementation of the civil service laws, rules, and regulations, and all Executive orders imposing responsibilities on the Office by:

(a) Investigating the qualifications and suitability of applicants for positions in the competitive service. The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the civil service rules and regulations have been met.

(b) Evaluating the effectiveness of: (1) personnel policies, programs, and operations of Executive and other Federal agencies subject to the jurisdiction of the Office, including their effectiveness with regard to merit selection and employee development; (2) agency compliance with and enforcement of applicable laws, rules, regulations and office directives; and (3) agency personnel management evaluation systems.

(c) Investigating, or directing an agency to investigate and report on, apparent violations of applicable

laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.

(d) Requiring agencies to report, in a manner and at times as the Director may prescribe, personnel information the Director requests relating to civilian employees in the Executive branch of the Government, as defined by Section 311 of the Civil Service Reform Act of 1978 [set out as a note under section 3101 of this title], including positions and officers and employees in the competitive, excepted and Senior Executive services, whether permanent, career-conditional, temporary or emergency.

§5.3. ENFORCEMENT

(a) The Director is authorized to ensure enforcement of the civil service laws, rules, and regulations, and all applicable Executive orders, by:

(1) Instructing an agency to separate or take other action against an employee serving an appointment subject to investigation when the Director finds that the employee is disqualified for Federal employment. Where the employee or the agency appeals the Director's finding that a separation or other action is necessary, the Director may instruct the agency as to whether or not the employee should remain on duty and continue to receive pay pending adjudication of the appeal: *Provided*, That when an agency separates or takes other action against an employee pursuant to the Director's instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee's qualifications and suitability, the agency shall, upon request of the Director, restore the employee to duty or otherwise reverse any action taken.

(2) Reporting the results of evaluation or investigations to the head of the agency concerned with instructions for any corrective action necessary, including cancellation of personnel actions where appropriate. The Director's findings resulting from evaluations or investigations are binding unless changed as a result of agency evidence and arguments against them. If, during the course of any evaluation or investigation under this Section, the Director finds evidence of matters which come within the investigative and prosecutorial jurisdiction of the Special Counsel of the Merit Systems Protection Board, the Director shall refer this evidence to the Special Counsel for appropriate disposition.

(b) Whenever the Director issues specific instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions.

(c) If the agency head fails to comply with the specific instructions of the Director as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the Director may certify to the Comptroller General of the United States the agency's failure to act together with such additional information as the Comptroller General may require, and shall furnish a copy of such certification to the head of the agency concerned. The individual with respect to whom such separation or other corrective action was instructed shall be entitled thereafter to no pay or only to such pay as appropriate to effectuate the Director's instructions.

§5.4. INFORMATION AND TESTIMONY

When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their author-

ized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section.

RULE VI—EXCEPTIONS FROM THE COMPETITIVE SERVICE

§ 6.1. AUTHORITY TO EXCEPT POSITIONS FROM THE COMPETITIVE SERVICE

(a) The Office may except positions from the competitive service when it determines that appointments thereto through competitive examination are not practicable. These positions shall be listed in the Office's annual report for the fiscal year in which the exceptions are made.

(b) The Office shall decide whether the duties of any particular position are such that it may be filled as an excepted position under the appropriate schedule.

(c) Notice of the Office's decision granting authority to make appointments to an excepted position under the appropriate schedule shall be published in the FEDERAL REGISTER.

§ 6.2. SCHEDULES OF EXCEPTED POSITIONS

The Office shall list positions that it excepts from the competitive service in Schedules A, B, and C, which schedules shall constitute parts of this Rule, as follows:

SCHEDULE A

Positions other than those of a confidential or policy-determining character for which it is not practicable to examine shall be listed in Schedule A.

SCHEDULE B

Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination shall be listed in Schedule B. Appointments to these positions shall be subject to such noncompetitive examinations as may be prescribed by the Office.

SCHEDULE C

Positions of a confidential or policy-determining character shall be listed in Schedule C.

§ 6.3. METHOD OF FILLING EXCEPTED POSITIONS AND STATUS OF INCUMBENTS

(a) The head of an agency may fill excepted positions by the appointment of persons without civil service eligibility or competitive status and such persons shall not acquire competitive status by reason of such appointment: *Provided*, That the Office, in its discretion, may by regulation prescribe conditions under which excepted positions may be filled in the same manner as competitive positions are filled and conditions under which persons so appointed may acquire a competitive status in accordance with the Civil Service Rules and Regulations.

(b) To the extent permitted by law and the provisions of this Rule, appointments and position changes in the excepted service shall be made in accordance with such regulations and practices as the head of the agency concerned finds necessary.

§ 6.4. REMOVAL OF INCUMBENTS OF EXCEPTED POSITIONS

Except as may be required by statute, the Civil Service Rules and Regulations shall not apply to removals from positions listed in Schedules A and C or from positions excepted from the competitive service by statute. The Civil Service Rules and Regulations shall apply to removals from positions listed in Schedule B of persons who have competitive status.

§ 6.5. ASSIGNMENT OF EXCEPTED EMPLOYEES

No person who is serving under an excepted appointment shall be assigned to the work of a position in the

competitive service without prior approval of the Office.

§ 6.6. REVOCATION OF EXCEPTIONS

The Office may remove any position from or may revoke in whole or in part any provision of Schedule A, B, or C. Notice of the Office's decision making these changes shall be published in the FEDERAL REGISTER.

§ 6.7. MOVEMENT OF PERSONS BETWEEN THE CIVIL-SERVICE SYSTEM AND OTHER MERIT SYSTEMS

Whenever the Office and any Federal agency having an established merit system determine it to be in the interest of good administration and consistent with the intent of the civil-service laws and any other applicable laws, they may enter into an agreement prescribing conditions under which persons may be moved from one system to the other and defining the status and tenure that the persons affected shall acquire upon such movement.

§ 6.8. SPECIFIED EXCEPTIONS

(a) Positions in the Department of the Interior and in the Department of Commerce whose incumbents serve as the principal representative of the Secretary in their respective regions shall be listed in Schedule C for grades not exceeding grade GS-15 of the General Schedule, and shall be designated Noncareer Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on February 15, 1975, in the competitive service shall not be affected by the foregoing provisions of this Section.

(b) Positions in the Community Services Administration and ACTION [now Corporation for National and Community Service] whose incumbents serve as regional director or regional administrator shall be listed in Schedule C for grades not exceeding GS-15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on November 29, 1977, in the competitive service shall not be affected by the foregoing provisions of this subsection.

(c) Within the Department of Agriculture, positions the incumbents of which serve as State Executive Directors of the Consolidated Farm Service Agency and positions the incumbents of which serve as State Directors or State Directors-at-Large for Rural Economic and Community Development shall be listed in Schedule C for all grades of the General Schedule.

RULE VII—GENERAL PROVISIONS

§ 7.1. DISCRETION IN FILLING VACANCIES

In his discretion, an appointing officer may fill any position in the competitive service either by competitive appointment from a civil-service register or by noncompetitive selection of a present or former Federal employee, in accordance with the Civil Service Regulations. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race.

§ 7.2. PERSONNEL REPORTS

Each agency shall report to the Office, in such manner and at such times as the Office may prescribe, such personnel information as it may request relating to positions and officers and employees in the competitive service and in the excepted service, whether permanent or career, career-conditional, indefinite, temporary, emergency, or subject to contract.

§ 7.3. REEMPLOYMENT RIGHTS

The Office, whenever it determines it to be necessary, shall prescribe regulations governing the release of employees (both within the competitive service and the excepted service) by any agency in the executive branch of the Government for employment in any other

agency, and governing the establishment, granting, and exercise of rights to reemployment in the agencies from which employees are released.

§ 7.4. CITIZENSHIP

(a) No person shall be admitted to competitive examination unless such person is a citizen or national of the United States.

(b) No person shall be given any appointment in the competitive service unless such person is a citizen or national of the United States.

(c) The Office may, as an exception to this rule and to the extent permitted by law, authorize the appointment of aliens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.

RULE VIII—APPOINTMENTS TO OVERSEAS POSITIONS

§ 8.1. ADDITIONAL AUTHORITY OF THE OFFICE

In addition to authorizing the recruitment and appointment of persons to overseas positions under regulations issued under the preceding Rules, the Office may, by the regulations prescribed by it, authorize the recruitment and appointment of persons to such positions as provided in section 2 of this Rule. As used in this Rule, "overseas positions" means positions in foreign countries and in other areas beyond the continental limits of the United States, except as provided in section 8.4 hereof.

§ 8.2. APPOINTMENT OF UNITED STATES CITIZENS

United States citizens may be recruited overseas for appointment to overseas positions in the competitive service without regard to the competitive requirements of the Civil Service Act. Persons so recruited who meet the qualification standards and other requirements of the Office for overseas positions may be given appointments to be known as "overseas limited appointments." Such appointments shall be of temporary or indefinite duration, and shall not confer the right to acquire a competitive status. The Office may authorize overseas limited appointments for United States citizens recruited within the continental limits of the United States whenever it determines that it is not feasible to appoint from a civil-service register. Persons serving under appointments made pursuant to this section are hereby excluded from the operation of the Civil Service Retirement Act of May 29, 1930, as amended [section 8301 et seq. of this title], unless eligible for retirement benefits by continuity of service or otherwise.

§ 8.3. APPOINTMENT OF PERSONS NOT CITIZENS OF THE UNITED STATES

Persons who are not citizens of the United States may be recruited overseas and appointed to overseas positions without regard to the Civil Service Act.

§ 8.4. POSITIONS EXCEPTED FROM THE APPLICATION OF THIS RULE

This Rule shall not apply to positions in Hawaii, Puerto Rico, the Virgin Islands, and Alaska, and on the Isthmus of Panama.

RULE IX—EXECUTIVE, ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES GS-16, 17, AND 18 OF THE GENERAL SCHEDULE

[Revoked by Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521.]

PART II—SPECIAL PROVISIONS FOR TRANSITION FROM INDEFINITE APPOINTMENT SYSTEM TO CAREER-CONDITIONAL APPOINTMENT SYSTEM

§ 201

(a) Under such conditions as the Office of Personnel Management may prescribe, all employees serving under indefinite appointments in the competitive serv-

ice on the effective date of this order who were appointed by selection in regular order from appropriate competitive civil-service registers established subsequent to February 4, 1946, shall, as of the effective date of this order, have their appointments converted to career-conditional appointments if they have had less than three years of creditable service, and to career appointments if they have had three or more years of such service since they were appointed: *Provided*, That any such employees who left their positions prior to the effective date of this order to enter the armed forces of the United States and are reemployed in the competitive service after the effective date of this order pursuant to application for employment made within ninety days after honorable discharge, or after hospitalization continuing after discharge for not more than one year, shall have their former indefinite appointments converted to career-conditional or career appointments in accordance with this section: *Provided further*, That employees serving in excepted positions who would meet the conditions for career-conditional or career appointments if they were serving in competitive positions shall be granted competitive status upon completion of a probationary period.

(b) The Office may prescribe the conditions under which employees who are serving under indefinite appointments in the competitive service on the effective date of this order and who were not appointed by selection in regular order from competitive civil-service registers may be examined and have their names entered on existing competitive civil-service registers. When such employees are within reach for appointment from such registers they shall be eligible for career-conditional appointments if, since they were given indefinite appointments, they have had less than three years of creditable service, and for career appointments if they have had three or more years of such service.

(c) All employees in the competitive service who on the effective date of this order are serving under indefinite appointments made noncompetitively based upon prior service with a competitive status shall, as of the effective date of this order, have their appointments converted to career-conditional appointments if they have had less than three years of creditable service and to career appointments if they have had three or more years of such service under either permanent or indefinite appointment: *Provided*, That any such employees who left their positions prior to the effective date of this order to enter the armed forces of the United States and are reemployed in the competitive service after the effective date of this order pursuant to application for employment made within ninety days after honorable discharge, or after hospitalization continuing after discharge for not more than one year, shall have their former indefinite appointments converted to career-conditional or career appointments in accordance with this section: *Provided further*, That any such employees in the field service of the Post Office Department whose salary rates are fixed by the act of July 6, 1945, 59 Stat. 435, as heretofore or hereafter amended and supplemented, shall have their appointments converted to career appointments if they are serving in positions in the authorized complement of permanent positions (consisting of regular positions and positions within the authorized quota of substitutes).

(d) The Office shall define "creditable service" and shall prescribe the conditions for completion of the period of creditable service required for career appointment.

(e) Except as provided in section 201(c) hereof, this section shall not apply to employees serving under indefinite appointments in the field service of the Post Office Department whose salary rates are fixed by the act of July 6, 1945, 59 Stat. 435, as heretofore or hereafter amended and supplemented.

§ 202

(a) Notwithstanding the provisions of section 201(a) of this order, and subject to such noncompetitive examination or other requirements as the Office may pre-

scribe, any employee entitled to veteran preference who has a compensable service-connected disability of ten per centum or more may, upon recommendation of the agency concerned, noncompetitively acquire a competitive status subject to completion of a probationary period: *Provided*, That he is serving under an indefinite appointment, a temporary appointment pending establishment of a register, or a temporary appointment for job employment which has been continuous for more than one year: *Provided further*, That recommendation for acquisition of status under this section is made not later than December 31, 1957.

(b) Any employee who is recommended for non-competitive acquisition of competitive status under section 202(a) hereof and who satisfies the noncompetitive examination and other requirements of the Office shall have the appointment under which he is serving converted to a career appointment if he has completed a probationary period or to a career-conditional appointment if he has not completed a probationary period. The career-conditional appointment of such an employee shall be converted to a career appointment upon completion of probation.

(c) An employee in the field service of the Post Office Department whose salary rate is fixed by the act of July 6, 1945, 59 Stat. 435, as heretofore or hereafter amended and supplemented, may not be recommended for competitive status under section 202(a) hereof unless he can be appointed to a vacancy in the authorized complement of permanent positions (consisting of regular positions and positions within the authorized quota of substitutes). When such an employee is recommended for noncompetitive acquisition of competitive status and satisfies the noncompetitive examination and other requirements of the Office, his appointment shall be converted to a career appointment subject to satisfactory completion of a probationary period.

§ 203

The career-conditional appointment of any employee entitled to veteran preference who has a compensable service-connected disability of ten per centum or more may be converted to a career appointment: *Provided*, That he received his career-conditional appointment prior to January 1, 1958, and that, not later than December 31, 1958, the agency in which he is employed recommends such conversion and certifies to the Office that he has satisfactorily completed a one-year probationary period: *Provided further*, That any such employee who is not certified for career appointment under this section shall have his career-conditional appointment converted to a career appointment when he has completed the service requirement for such appointment prescribed under section 2.2(a) of Civil Service Rule II.

§ 204

In order to effectuate the purposes of section 1310 of the Supplemental Appropriations Act, 1952 (65 Stat. 757), as amended [set out as a note under section 3101 of this title], the Office shall, after consultation with the agencies concerned, determine the division of allowable permanent appointments within and between the expected service and the competitive service.

§ 205

The Office shall issue such regulations and instructions as may be necessary to effectuate the purposes of this part.

PART III

§ 301

The following-described executive orders and parts of executive orders are hereby revoked:

Part II of Executive Order No. 9830 of February 24, 1947, amending the Civil Service Rules: *Provided*, That the positions listed in Schedules A, B, and C as pro-

vided for in Civil Service Rule VI of that order, as amended, shall be considered as being listed in Schedules A, B, and C, respectively, as provided for in Civil Service Rule VI of this order, unless and until they are removed therefrom by the Office.

Executive Orders No. 9973 of June 28, 1948, No. 10440 of March 31, 1953, and No. 10463 of June 25, 1953, amending Civil Service Rule VI.

Executive Order No. 10180 of November 13, 1950, establishing special personnel procedures in the interest of national defense.

PART IV

§ 401

This order shall become effective on the first Sunday after the sixtieth day after the date hereof.

EXECUTIVE ORDER NO. 10590

Ex. Ord. No. 10590, Jan. 18, 1955, 20 F.R. 409, as amended by Ex. Ord. No. 10722, Aug. 7, 1957, 22 F.R. 6287; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 8, 1958, 23 F.R. 6971, which established the President's Committee on Government Employment Policy, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 10880

Ex. Ord. No. 10880, June 7, 1960, 25 F.R. 5131, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which provided for conversion of indefinite or temporary appointments to career or career-conditional appointments, was revoked by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617.

EXECUTIVE ORDER NO. 10925

Ex. Ord. No. 10925, Mar. 7, 1961, 26 F.R. 1977, as amended by Ex. Ord. No. 11114, June 24, 1963, 28 F.R. 6485; Ex. Ord. No. 11162, July 28, 1964, 29 F.R. 10563, which established the President's Committee on Equal Employment Opportunity, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 11114

Ex. Ord. No. 11114, June 24, 1963, 28 F.R. 6485, as amended by Ex. Ord. No. 11162, July 28, 1964, 29 F.R. 10563, which extended the authority of the President's Committee on Equal Employment Opportunity, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EX. ORD. NO. 11141. DISCRIMINATION ON THE BASIS OF AGE

Ex. Ord. No. 11141, Feb. 12, 1964, 29 F.R. 2477, provided: WHEREAS the principle of equal employment opportunity is now an established policy of our Government and applies equally to all who wish to work and are capable of doing so; and

WHEREAS discrimination in employment because of age, except upon the basis of a *bona fide* occupational qualification, retirement plan, or statutory requirement, is inconsistent with that principle and with the social and economic objectives of our society; and

WHEREAS older workers are an indispensable source of productivity and experience which our Nation can ill afford to lose; and

WHEREAS President Kennedy, mindful that maximum national growth depends on the utilization of all manpower resources, issued a memorandum on March 14, 1963, reaffirming the policy of the Executive Branch of the Government of hiring and promoting employees on the basis of merit alone and emphasizing the need to assure that older people are not discriminated against because of their age and receive fair and full consideration for employment and advancement in Federal employment; and

WHEREAS, to encourage and hasten the acceptance of the principle of equal employment opportunity for older persons by all sectors of the economy, private and public, the Federal Government can and should provide maximum leadership in this regard by adopting that principle as an express policy of the Federal Government not only with respect to Federal employees but also with respect to persons employed by contractors and subcontractors engaged in the performance of Federal contracts:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States and as President of the United States, I hereby declare that it is the policy of the Executive Branch of the Government that (1) contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a *bona fide* occupational qualification, retirement plan, or statutory requirement, and (2) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a *bona fide* occupational qualification, retirement plan, or statutory requirement. The head of each department and agency shall take appropriate action to enunciate this policy, and to this end the Federal Procurement Regulations and the Armed Services Procurement Regulation shall be amended by the insertion therein of a statement giving continuous notice of the existence of the policy declared by this order.

LYNDON B. JOHNSON.

EXECUTIVE ORDER No. 11162

Ex. Ord. No. 11162, July 28, 1964, 29 F.R. 10563, which related to membership of the President's Committee on Equal Employment Opportunity, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER No. 11202

Ex. Ord. No. 11202, Mar. 5, 1965, 30 F.R. 3185, which established career or career-conditional appointments for student trainees, was revoked by Ex. Ord. No. 11813, Oct. 7, 1974, 39 F.R. 36317, formerly set out below.

EX. ORD. NO. 11203. CAREER APPOINTMENTS TO CERTAIN QUALIFIED EMPLOYEES OF TREASURY DEPARTMENT

Ex. Ord. No. 11203, Mar. 12, 1965; 30 F.R. 3417, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Section 2 of the Civil Service Act (22 Stat. 403) and Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [sections 3301 and 7301 of this title] and as President of the United States, it is hereby ordered as follows—

SECTION 1. Any employee of the Treasury Department serving under an appointment under Schedule B of the Civil Service Rules in a position concerned with the protection of the life and safety of the President, members of his immediate family, or other persons for whom similar protective services are provided by law (which responsibility is hereinafter referred to as the protective function) may have his appointment converted to a career appointment if:

(1) he has completed at least three years of full-time continuous service in a position concerned with the protective function;

(2) The Secretary of the Treasury, or his designee, recommends the conversion of the employee's appointment within 90 days after the employee meets the service requirements of this section, or within 90 days after the date of this Order, whichever is later;

(3) he shall have passed a competitive examination appropriate for the position he is occupying or meets noncompetitive examination standards the Office of Personnel Management prescribes for his position; and

(4) he meets all other requirements prescribed by the Office pursuant to Section 5 of this Order.

SEC. 2. For the purposes of Section 1—

(1) "full-time continuous service" means service without a break of more than 30 calendar days;

(2) except as provided in paragraph (3) of this section, active service in the Armed Forces of the United States shall be deemed to be full-time continuous service in a position concerned with the protective function if the employee concerned shall have left a position concerned with the protective function to enter the Armed Forces and shall have been re-employed in a position concerned with the protective function within 120 days after he shall have been discharged from the Armed Forces under honorable conditions; and

(3) active service in the Armed Forces shall not be deemed to be full-time continuous service in a position concerned with the protective function if such active service exceeds a total of four years plus any period of additional service imposed pursuant to law.

SEC. 3. Any employee who shall have left a position concerned with the protective function to enter active service in the Armed Forces of the United States, who is re-employed in such a position within 120 days after his discharge under honorable conditions from such service, and who meets the requirements of Section 1 as the result of being credited with his period of active service in the Armed Forces pursuant to Section 2(2), may have his appointment converted if the Secretary of the Treasury or his designee, recommends that conversion within 90 days after his re-employment.

SEC. 4. Whenever the Secretary of the Treasury, or his designee, decides not to recommend conversion of the appointment of an employee under this Order or whenever the Secretary, or his designee, recommends conversion and the employee fails to qualify, the employee shall be separated by the date on which his current Schedule B appointment expires.

SEC. 5. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purposes of this Order.

EX. ORD. NO. 11219. APPOINTMENT IN COMPETITIVE SERVICE OF FOREIGN SERVICE OFFICERS AND EMPLOYEES

Ex. Ord. No. 11219, May 6, 1965, 30 F.R. 6381, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13967, provided:

By virtue of the authority vested in me by section 1753 of the Revised Statutes [sections 3301 and 7301 of this title] and the Civil Service Act (22 Stat. 403), and as President of the United States, it is hereby ordered as follows:

SECTION 1. Under regulations and conditions prescribed by the Office of Personnel Management, a present or former member of the Foreign Service may be appointed in the competitive service if he:

(a) Is qualified for the position in the competitive service;

(b) Was appointed in the Foreign Service under authority of the Foreign Service Act of 1946 as amended [former section 801 et seq. of Title 22, Foreign Relations and Intercourse], the Foreign Service Act of 1980 [section 3901 et seq. of Title 22], or legislation that supplements or replaces the latter Act;

(c) Served in the Foreign Service under an unlimited, career-type appointment and, immediately before his separation from that appointment, he completed at least one year of continuous service under one or more nontemporary appointments in the Foreign Service which may include the service that made him eligible for his career-type appointment; and

(d) Is appointed within 3 years after his separation from the Foreign Service, or he completed at least 3 years of substantially continuous service under one or more nontemporary appointments in the Foreign Service immediately before his separation from the unlim-

ited, career-type appointment in that Service which may include the service that made him eligible for such appointment, or he is entitled to preference under section 2 of the Veterans' Preference Act of 1944, as amended [sections 1302 and 2108 of this title].

SEC. 2. (a) Except as provided in paragraph (b) of this section, a person appointed under Section 1 of this Order becomes a career conditional employee.

(b) A person appointed under Section 1 of this Order becomes a career employee when he:

(1) Has completed at least 3 years of substantially continuous service under one or more nontemporary appointments in the Foreign Service immediately before his separation from the unlimited, career-type appointment in that Service which may include the service that made him eligible for such appointment;

(2) Is appointed to a position in the competitive service required by law or Executive order to be filled on a permanent or career basis; or

(3) Has completed the service requirement for career tenure in the competitive service.

For the purpose of subparagraph (3) of this paragraph, service in the Foreign Service is creditable in meeting the service requirement only if the person concerned is appointed to a nontemporary position in the competitive service under Section 1 of this Order within 30 days after his separation from the Foreign Service.

SEC. 3. A person appointed to a nontemporary position in the competitive service under Section 1 of this Order acquires a competitive status automatically on appointment.

SEC. 4. Any law, Executive order, or regulation that would disqualify an applicant for appointment in the competitive service shall also disqualify a person for appointment under Section 1 of this Order.

SEC. 5. For the purpose of this Order, a person is deemed to be a member of the "Foreign Service" if he was appointed in any agency under authority of the Foreign Service Act of 1946, as amended [former section 801 et seq. of Title 22, Foreign Relations and Intercourse], the Foreign Service Act of 1980 [section 3901 et seq. of Title 22], or legislation that supplements or replaces the latter Act.

EX. ORD. NO. 11315. AMENDING THE CIVIL SERVICE RULES TO AUTHORIZE AN EXECUTIVE ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES 16, 17, AND 18 OF THE GENERAL SCHEDULE

Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14729, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS, the increasing complexities of Government require personnel of the highest attainable qualifications who are capable of assuming and discharging efficiently major and varied duties and responsibilities in the Executive Branch in response to present and future needs; and

WHEREAS, this need for high quality can best be met by the establishment of an executive assignment system for the top three grades of the General Schedule, extending and adapting merit principles in recruitment, selection, and development, combined with improvements in the identification, assignment and utilization of key personnel:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by 5 U.S.C. 3301 and 3302, and as President of the United States, it is ordered as follows:

PART I. CIVIL SERVICE RULES

SECTION 1. The Civil Service Rules are amended by the addition of Civil Service Rule IX reading as follows:

[Civil Service Rule IX, as established by Ex. Ord. No. 11315, as amended, was revoked by Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521. See Ex. Ord. No. 10577, as amended, set out above.]

CIVIL SERVICE RULE VI

SEC. 2. Civil Service Rule VI is amended in pertinent part as follows:

(a) Section 6.1(a) is amended to read as follows:

"(a) The Office may except positions from the competitive service when it determines that appointments thereto through competitive examination are not practicable. These positions shall be listed in the Office's annual report for the fiscal year in which the exceptions are made. The exception from the competitive service is effective on publication in the Federal Register."

(b) Section 6.6 is amended to read as follows:

"Section 6.6 *Revocation of exceptions*. The Office may remove any position from or may revoke in whole or in part any provision of Schedule A, B, or C. These changes are effective on publication in the Federal Register."

PART II. SPECIAL PROVISIONS FOR TRANSITION TO THE FULL ESTABLISHMENT OF EXECUTIVE ASSIGNMENTS UNDER RULE IX

SEC. 3. *Effective dates*. This order, except section 1, is effective upon filing for publication in the Federal Register. Section 1 of this order is effective not later than one year from the date of this order, or at such earlier dates as the Office of Personnel Management may specify for individual agencies or positions.

SEC. 4. *Interim appointments*. After the date of this order and before Civil Service Rule IX has become effective as to a position, an appointing officer may fill the position in accordance with the appointment system in effect on the day of the appointment.

SEC. 5. *Conversion of incumbents*. On the day Civil Service Rule IX becomes effective as to a position, the appointment of the incumbent of that position shall be changed as follows:

(a) If he is serving under a career or career-conditional appointment in the competitive service, he shall be converted to a Career Executive Assignment;

(b) If he is serving in the excepted service under a nontemporary appointment, he shall be converted to a Noncareer Executive Assignment;

(c) If he is serving in the competitive service under an indefinite or temporary appointment without definite time limit and:

(1) if he has served under this type of appointment for at least five years, he shall be:

(i) converted to a Career Executive Assignment, or appointed to a continuing position in the competitive service in grade GS-15, or below;

(ii) converted to a Noncareer Executive Assignment;

or

(iii) separated from the service; or

(2) if he has served under this type of appointment for less than five years, he shall be:

(i) converted to a Noncareer Executive Assignment;

(ii) separated from the service; or

(iii) allowed to continue to serve until he has served five years, at which time the appointing officer shall take one of the actions provided for in subparagraph (1) of this paragraph.

An incumbent who is serving under any other type of appointment shall continue under that appointment until it is terminated.

PART III. ADMINISTRATION

SEC. 6. *Office responsibilities*. The Office of Personnel Management is responsible to the President for the effective implementation and administration of the executive assignment system established by this Order. The Office shall continuously review operations under this system, shall recommend promptly to the President any changes that are necessary to improve this system, and shall report periodically to the President any significant developments in the operation of the system. The Office shall recommend to the President a program of special honors and awards for the recognition of persons assigned to Career Executive Assignments and a program for the development and training of persons assigned to Career Executive Assignments. The training program shall include the establishment of special

training and educational facilities, and provide for the relevant use of outside training facilities.

SEC. 7. *Responsibilities of the agencies.* The head of each agency in which there are positions covered by Civil Service Rule IX shall periodically review with the Office of Personnel Management his plans for staffing. The head of a newly established agency shall initially review with the Office his plans for staffing as soon as practicable after the establishment of the agency. The head of each agency shall cooperate fully with the Office in the establishment of special facilities and special boards and panels that are required under Civil Service Rule IX as a means of recruiting persons of the highest quality.

SEC. 8. *Regulations.* The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose and intent of this Order.

EXECUTIVE ORDER NO. 11598

Ex. Ord. No. 11598, June 16, 1971, 36 F.R. 11711, formerly set out as a note under this section, which related to the listing of certain job vacancies by federal agencies and government contractors and subcontractors, was superseded by Ex. Ord. No. 11701, Jan. 24, 1973, 38 F.R. 2675, set out as a note under section 4212 of Title 38, Veterans' Benefits.

EXECUTIVE ORDER NO. 11813

Ex. Ord. No. 11813, Oct. 7, 1974, 39 F.R. 36317, which related to career or career-conditional appointments for cooperative education students, was revoked by Ex. Ord. No. 12015, Oct. 26, 1977, 42 F.R. 56947, set out below.

EX. ORD. NO. 11839. AMENDING THE CIVIL SERVICE RULES TO EXCEPT CERTAIN POSITIONS IN REGIONAL OFFICES FROM THE CAREER SERVICE

Ex. Ord. No. 11839, Feb. 15, 1975, 40 F.R. 7351, provided: The program to decentralize Federal policy and decision making and to involve local governments and other interested parties in Federal, State, and local policy and program development requires a capability for deep involvement in the development and advocacy of Administration proposals and policies, and support of their controversial aspects, on the part of certain senior regional officials.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Civil Service Rule VI is amended by adding the following Section:

“SECTION 6.8. SPECIFIED EXCEPTIONS

“Positions in the Department of the Interior whose incumbents serve as the principal representative of the Secretary in their respective regions shall be listed in Schedule C for grades not exceeding grade GS-15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on February 15, 1975, in the competitive service shall not be affected by the foregoing provisions of this Section.”

SEC. 2. Civil Service Rule IX is amended by adding the following:

“SEC. 9.11. SPECIFIED NONCAREER EXECUTIVE ASSIGNMENTS

“The regional director, regional administrator, or the Secretary's principal regional representative positions in the Department of Health, Education, and Welfare, Housing and Urban Development, Transportation and Labor, and those positions in the Environmental Protection Agency shall be designated Noncareer Executive Assignments; and, the Limited Executive Assignments of any incumbents of these positions on February 15, 1975, are converted to Noncareer Executive Assignments. Incumbents of these positions serving in

Career Executive Assignments on February 15, 1975, shall not be affected by the foregoing provisions of this Section.”

GERALD R. FORD.

EX. ORD. NO. 11856. AMENDING THE CIVIL SERVICE RULES TO EXCEPT CERTAIN POSITIONS IN REGIONAL OFFICES FROM THE CAREER SERVICE

Ex. Ord. No. 11856, May 7, 1975, 40 F.R. 20259, provided:

By virtue of the authority vested in me by the Constitution of the United States of America and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, Section 9.11 of Civil Service Rule IX is amended by adding “and the Small Business Administration” after “Environmental Protection Agency.”

GERALD R. FORD.

EX. ORD. NO. 11887. AMENDING THE CIVIL SERVICE RULES TO EXCEPT CERTAIN POSITIONS FROM THE CAREER SERVICE

Ex. Ord. No. 11887, Nov. 4, 1975, 40 F.R. 51411, provided:

By virtue of the authority vested in me by the Constitution of the United States of America and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, Section 6.8 of Civil Service Rule VI is amended by adding “and in the Department of Commerce” after “Department of the Interior”.

GERALD R. FORD.

EX. ORD. NO. 11935. AMENDING THE CIVIL SERVICE RULES CONCERNING CITIZENSHIP REQUIREMENTS FOR FEDERAL EMPLOYMENT

Ex. Ord. No. 11935, Sept. 2, 1976, 41 F.R. 37301, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, Civil Service Rule VII (5 CFR Part 7) is hereby amended by adding thereto the following new section:

“SECTION 7.4. CITIZENSHIP

“(a) No person shall be admitted to competitive examination unless such person is a citizen or national of the United States.

“(b) No person shall be given any appointment in the competitive service unless such person is a citizen or national of the United States.

“(c) The Office may, as an exception to this rule and to the extent permitted by law, authorize the appointment of aliens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.”

EX. ORD. NO. 11955. CAREER OR CAREER-CONDITIONAL APPOINTMENT TO CERTAIN QUALIFIED EMPLOYEES OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Ex. Ord. No. 11955, Jan. 10, 1977, 42 F.R. 2499, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 3301 of title 5 of the United States Code [this section], and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The appointment of a Command Pilot, Pilot or Mission Specialist candidate to a position in the Space Shuttle Astronaut Program of the National Aeronautics and Space Administration, which is listed under Schedule B of the Schedule of Excepted Positions, may be converted to career or career-conditional appointment if:

(a) the candidate has successfully completed two years of service as a candidate in an appropriate training program;

(b) the Administrator of the National Aeronautics and Space Administration, or the Administrator's designee, recommends the conversion of the candidate's appointment within ninety days of completion of the requirements of section 1(a);

(c) the candidate meets noncompetitive examination standards prescribed by the Office of Personnel Management; and

(d) the candidate meets all other requirements prescribed by the Office of Personnel Management pursuant to section 3 of this order.

SEC. 2. Whenever the Administrator of the National Aeronautics and Space Administration, or the Administrator's designee, decides not to recommend conversion of an appointment under this order or whenever the Administrator, or the Administrator's designee, recommends conversion and the candidate fails to qualify, the candidate shall be separated not later than the date of expiration of the current Schedule B appointment, unless the appointment can be converted through appropriate competitive examination or the candidate can be assigned to a suitable position under another excepted authority prior to the expiration date.

SEC. 3. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this order.

EXECUTIVE ORDER NO. 12008

Ex. Ord. No. 12008, Aug. 25, 1977, 42 F.R. 43373, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which established a Presidential Management Intern Program, was revoked by Ex. Ord. No. 12364, May 24, 1982, 47 F.R. 22931, set out below.

EX. ORD. NO. 12015. CAREER OR CAREER-CONDITIONAL APPOINTMENTS IN COMPETITIVE SERVICE FOR STUDENTS COMPLETING APPROVED CAREER-RELATED WORK-STUDY PROGRAMS

Ex. Ord. No. 12015, Oct. 26, 1977, 42 F.R. 56947, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. As used in this order "career-related work-study programs" are those programs established by the Office of Personnel Management which provide for a formally-arranged schedule of periods of attendance at an accredited school combined with periods of career-related work in a Federal agency under a Schedule B appointment.

SEC. 2. The appointment of a student to a position in a career-related work-study program may be converted noncompetitively to a career or career-conditional appointment if the student:

(a) has completed within the preceding 120 days an educational program that meets the provisions established by the Office of Personnel Management;

(b) has satisfied all course requirements leading to completion of the related curriculum at an accredited school;

(c) is recommended for such an appointment by the employing agency in which the career-related work was performed; and,

(d) satisfies such other requirements and conditions as the Office of Personnel Management may prescribe for career or career-conditional appointment of an individual in career-related work-study programs.

SEC. 3. The Office of Personnel Management shall prescribe such regulations as it deems necessary to carry out the provisions of this order and to provide for the continuation of planning, implementation and evaluation of employment programs for students throughout the Government. These regulations shall provide for the periodic evaluation of the work of each student and require that each student's continuation in the program shall be dependent upon a finding of satisfactory performance.

SEC. 4. Executive Order No. 11813 of October 7, 1974, is hereby revoked.

JIMMY CARTER.

EX. ORD. NO. 12021. AMENDING THE CIVIL SERVICE RULES TO EXCEPT CERTAIN POSITIONS FROM THE CAREER SERVICE

Ex. Ord. No. 12021, Nov. 30, 1977, 42 F.R. 61237, provided:

By virtue of the authority vested in me by the Constitution of the United States of America, and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. That portion of Section 6.8 of Civil Service Rule VI following the heading "Specified Exceptions." (5 C.F.R. 6.8) is designated subsection (a) and a new subsection (b) is added as follows:

"(b) Positions in the Community Services Administration and ACTION [now Corporation for National and Community Service] whose incumbents serve as regional director or regional administrator shall be listed in Schedule C for grades not exceeding GS-15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on November 29, 1977, in the competitive service shall not be affected by the foregoing provisions of this subsection."

SEC. 2. That portion of Section 9.11 of Civil Service Rule IX following the heading "Career Executive Assignments; selection and assignment." (5 C.F.R. 9.11) is designated subsection (a) and a new subsection (b) is added as follows:

"(b) The regional director or regional administrator positions in the Defense Civil Preparedness Agency and the General Services Administration shall be designated as Noncareer Executive Assignments and the Limited Executive Assignments of any incumbents of these positions on November 29, 1977, are converted to Noncareer Executive Assignments. Incumbents of these positions who are, on November 29, 1977, serving in Career Executive Assignments shall not be affected by the foregoing provisions of this subsection."

JIMMY CARTER.

EXECUTIVE ORDER NO. 12026

For provisions relating to eligibility for reinstatement in the competitive civil service of certain employees of the Energy Department, see Ex. Ord. No. 12026, Dec. 5, 1977, 42 F.R. 61849, set out as a note under section 7292 of Title 42, The Public Health and Welfare.

EX. ORD. NO. 12043. AMENDING THE CIVIL SERVICE RULES REGARDING NOTICE OF EXEMPTIONS FROM THE COMPETITIVE SERVICE

Ex. Ord. No. 12043, Mar. 7, 1978, 43 F.R. 9773, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by the Constitution of the United States of America, and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Section 6.1 of Civil Service Rule VI (5 CFR 6.1) is amended by deleting the third sentence in subsection (a) thereof and by adding a new subsection (c) as follows:

"(c) Notice of the Office's decision granting authority to make appointments to an excepted position under the appropriate schedule shall be published in the FEDERAL REGISTER."

SEC. 2. Section 6.6 of the Civil Service Rule VI (5 CFR 6.6) is amended by deleting the second sentence thereof and substituting "Notice of the Office's decision making these changes shall be published in the FEDERAL REGISTER."

SEC. 3. Section 9.6 of the Civil Service Rule IX (5 CFR 9.6) is amended by adding a new subsection (c) as follows:

“(c) The Office shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Limited Executive Assignment.”

SEC. 4. Section 9.20 of Civil Service Rule IX (5 CFR 9.20) is amended by adding a new subsection (f) as follows:

“(f) The Office shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Noncareer Executive Assignment.”

JIMMY CARTER.

EX. ORD. NO. 12125. AMENDING THE CIVIL SERVICE RULES RELATING TO COMPETITIVE STATUS FOR HANDICAPPED FEDERAL EMPLOYEES

Ex. Ord. No. 12125, Mar. 15, 1979, 44 F.R. 16879, provided:

By the authority vested in me as President of the United States of America by Sections 3301 and 3302 of Title 5 of the United States Code, and in order to permit severely physically handicapped and mentally retarded individuals to obtain civil service competitive status, Civil Service Rule 3.1 (5 CFR 3.1) is hereby amended by adding the following new subsection:

“(b) Upon recommendation by the employing agency, and subject to such requirements as the Office of Personnel Management may prescribe, the following classes of handicapped employees may acquire competitive status without competitive examination:

“(1) A severely physically handicapped employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

“(2) A mentally retarded employee who completes at least two years of satisfactory service in a position excepted from the competitive service.”

JIMMY CARTER.

EXECUTIVE ORDER NO. 12257

Ex. Ord. No. 12257, Dec. 18, 1980, 45 F.R. 84005, which provided for noncompetitive conversion of participants in the Comprehensive Employment and Training Act program to career or career-conditional Civil Service status, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 12300

Ex. Ord. No. 12300, Mar. 23, 1981, 46 F.R. 18683, which amended section 6.8 of Civil Service Rule VI by adding subsec. (c), excepting certain positions in Department of Agriculture from the competitive service, was superseded by Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519, set out below.

EXECUTIVE ORDER NO. 12362

Ex. Ord. No. 12362, May 12, 1982, 47 F.R. 21231, as amended by Ex. Ord. No. 12585, Mar. 3, 1987, 52 F.R. 6773, which related to appointment to competitive status of certain overseas employees upon return to the United States, was revoked by Ex. Ord. No. 12721, July 30, 1990, 55 F.R. 31349, set out below.

EX. ORD. NO. 12364. PRESIDENTIAL MANAGEMENT INTERN PROGRAM

Ex. Ord. No. 12364, May 24, 1982, 47 F.R. 22931, as amended by Ex. Ord. No. 12645, July 12, 1988, 53 F.R. 26750, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Sections 3301 and 3302 of Title 5 of the United States Code, and in order to provide for the recruitment and selection of outstanding employees for careers in public sector management, it is hereby ordered as follows:

SECTION 1. There is hereby reconstituted the Presidential Management Intern Program. The purpose of the Program is to attract to the Federal service outstanding men and women from a variety of academic disciplines who have a clear interest in, and commitment to, a career in the analysis and management of

public policies and programs. Individuals selected for the Program will be known as Presidential Management Interns.

SEC. 2. Eligible individuals are those who have pursued a course of study at the graduate level which demonstrates both an exceptional ability and the commitment stated above. Such individuals at the time of application must have recently received or must expect to receive soon an appropriate advanced degree.

SEC. 3. (a) The Office of Personnel Management shall provide specific guidance as to what constitutes an appropriate advanced degree.

(b) The Office of Personnel Management shall develop appropriate procedures for the recruitment, nomination, screening, placement and continuing career development of outstanding individuals possessing the qualifications described above.

(c) In developing those procedures, the Office of Personnel Management shall be guided by the following principles and policies:

(1) The number of new Presidential Management Interns selected shall not exceed four hundred in any fiscal year.

(2) Final placement of Presidential Management Interns shall be made by the head of the department, agency, or component within the Executive Office of the President in which the Intern is to be employed, or by the designee thereof.

(3) Universities and colleges participating in the Program shall make nominations for the Program. In making nominations, they shall establish competitive selection processes and procedures to ensure that all applicants receive careful and thorough review.

(4) The procedures so developed shall provide for such affirmative actions as the Office of Personnel Management deems appropriate to assure equal employment opportunity. The procedures shall also provide for the application of appropriate veterans preference criteria.

SEC. 4. (a) Successful candidates shall be appointed as Presidential Management Interns to positions in Schedule A of the excepted service. The appointment shall not exceed two years unless extended by the Federal department or agency, with the concurrence of the Office of Personnel Management, for up to one additional year.

(b) Tenure for the Presidential Management Interns shall be governed by the following principles and policies:

(1) Assigned responsibilities shall be consistent with an Intern's educational background and career interests, and the purposes of this Program.

(2) Continuation in the Program shall be contingent upon satisfactory performance by the Interns throughout the internship period.

(3) Except as provided in subsection (4) of this Section, service as an Intern shall confer no rights to further Federal employment in either the competitive or excepted service upon the expiration of the internship period.

(4) Competitive civil service status may be granted to Interns who satisfactorily complete their internships and meet all other requirements prescribed by the Office of Personnel Management.

SEC. 5. Those individuals who are currently undergoing the process of selection, or who were selected or appointed under the provisions of Executive Order No. 12008 [formerly set out as a note above] and who have not at this time completed their scheduled period of excepted service, may continue their internships under the terms of this Order.

SEC. 6. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purposes of this Order.

SEC. 7. Executive Order No. 12008 of August 25, 1977 is revoked.

RONALD REAGAN.

EX. ORD. NO. 12505. CAREER APPOINTMENTS TO CERTAIN OFFICE OF MANAGEMENT AND BUDGET EMPLOYEES

Ex. Ord. No. 12505, Feb. 12, 1985, 50 F.R. 6151, provided:

By the authority vested in me as President by the laws of the United States of America, including Section 3301 and 3302 of Title 5, and Section 521 of Title 31 of the United States Code, it is hereby ordered as follows:

SECTION 1. No later than April 1, 1985, any employee of the Office of Management and Budget serving under an appointment under Schedule A in a position not limited to one year or less, concerned with implementation of the President's paperwork reduction and regulatory review and planning programs, may have his or her appointment converted to a career or career-conditional appointment if the Director of the Office of Management and Budget determines that:

(a) The employee has completed at least one year of full-time continuous service in a position concerned with the paperwork reduction and regulatory program;

(b) There is a continuing need for the position filled by the employee;

(c) The employee's past performance has been satisfactory and the employee possesses the qualifications necessary to continue in the position; and

(d) The employee meets the citizenship requirements and qualification standards appropriate for the position.

SEC. 2. If the Director determines not to convert an employee's appointment to career or career-conditional status under the preceding Section, the employee shall be separated not later than the date of expiration of the current appointment.

SEC. 3. Employees whose appointments are converted under this Order shall become career-conditional employees, or career employees if they have completed the service requirements for career tenure, and all converted employees shall acquire a competitive status.

RONALD REAGAN.

EX. ORD. NO. 12596. NONCOMPETITIVE CONVERSION TO CAREER STATUS OF CERTAIN EMPLOYEES IN PROFESSIONAL AND ADMINISTRATIVE CAREER POSITIONS

Ex. Ord. No. 12596, May 7, 1987, 52 F.R. 17537, provided: By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5 of the United States Code, it is hereby ordered as follows:

SECTION 1. An individual who is employed in a Professional or Administrative Career position under Schedule B under the authority of 5 C.F.R. 213.3202(l) may be converted noncompetitively to a career or career-conditional appointment at GS-9, provided the individual meets the qualifications and other requirements established by the Director of the Office of Personnel Management, and further provided the individual's performance is determined by the employing agency, in a careful and formal evaluation, to warrant such conversion at GS-9.

SEC. 2. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this Order.

RONALD REAGAN.

EX. ORD. NO. 12685. NONCOMPETITIVE CONVERSION OF PERSONAL ASSISTANTS TO EMPLOYEES WITH DISABILITIES

Ex. Ord. No. 12685, July 28, 1989, 54 F.R. 31796, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Upon recommendation by the employing agency, and subject to qualifications and other requirements prescribed by the Office of Personnel Management, an employee in a position in the excepted service under 5 C.F.R. 213.3102(11) as a reader, interpreter, or personal assistant for a handicapped employee, whose employment in such position is no longer necessary and who has completed at least 1 year of satisfactory service in such position under a non-temporary appointment, may be converted noncompetitively to a career or career-conditional appointment.

SEC. 2. This order shall be effective upon publication in the Federal Register.

GEORGE BUSH.

EX. ORD. NO. 12718. PRESIDENT'S ADVISORY COMMISSION ON THE PUBLIC SERVICE

Ex. Ord. No. 12718, June 29, 1990, 55 F.R. 27451, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to provide a continuing source of advice on the public service from outstanding leaders in various walks of private life, it is hereby ordered as follows:

SECTION 1. *Establishment.* The President's Advisory Commission on the Public Service ("Commission") is hereby established. The Commission shall be comprised of 13 members to be appointed by the President from among leading citizens in private life. The members shall be appointed for 2-year terms, except that initial appointments shall include six members appointed to serve 1-year terms. Any vacancy in the Commission shall be filled by an appointment for the remainder of the term for which the original appointment was made, and a member whose term has expired may serve until his or her successor has been appointed. The President shall designate one of the members of the Commission to serve as Chairperson.

SEC. 2. *Functions.* (a) The Commission shall meet from time to time at the request of the Chairperson and shall consider ways to enhance the public service in American life, including:

(1) improving the efficiency and attractiveness of the Federal civil service;

(2) increasing the interest among American students in pursuing careers in the public service; and

(3) strengthening the image of the public service in American life.

(b) The Commission shall submit a report on its activities to the Director of the Office of Personnel Management and the President each year.

SEC. 3. *Administrative Provisions.* (a) The members of the Commission shall serve without compensation, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(b) All executive agencies are directed, to the extent permitted by law, to provide such information, advice, and assistance to the Commission as the Commission may request.

(c) The Director of the Office of Personnel Management shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with administrative services, staff support, and necessary expenses.

SEC. 4. *General.* Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [5 U.S.C. App.], except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Office of Personnel Management in accordance with the guidelines and procedures established by the Administrator of General Services.

GEORGE BUSH.

EX. ORD. NO. 12721. ELIGIBILITY OF OVERSEAS EMPLOYEES FOR NONCOMPETITIVE APPOINTMENTS

Ex. Ord. No. 12721, July 30, 1990, 55 F.R. 31349, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5 and section 301 of title 3 of the United States Code, and in order to permit certain overseas employees to acquire competitive status upon returning to the United States, it is hereby ordered as follows:

SECTION 1. A United States citizen who is a family member of a Federal civilian employee, of a nonap-

propriated fund employee, or of a member of a uniformed service and who meets the qualifications and other requirements established by the Director of the Office of Personnel Management, including an appropriate period of satisfactory service under one or more overseas appointments in the excepted or competitive civil service, may be appointed noncompetitively to a competitive service position in the executive branch within the United States (including Guam, Puerto Rico, and the Virgin Islands). The employing agency in the United States may waive a requirement for a written test for an individual appointed under this order if the agency determines that the duties and responsibilities of the position occupied overseas were similar enough to those of the position to which the individual is being appointed under this order to make the written test unnecessary.

SEC. 2. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this order.

SEC. 3. To the extent there is any conflict between this order and Civil Service Rule 8.2 (5 CFR 8.2) [set out above], the provisions of this order shall control.

SEC. 4. (a) Executive Order No. 12362 of May 12, 1982, as amended, and Executive Order No. 12585 of March 3, 1987, are revoked.

(b) Existing regulations prescribed by the Director of the Office of Personnel Management under Executive Order No. 12362, as amended, shall continue in effect until modified or superseded by the Director of the Office of Personnel Management.

SEC. 5. This order shall be effective upon publication in the Federal Register.

GEORGE BUSH.

EX. ORD. NO. 12940. AMENDMENT TO CIVIL SERVICE RULE VI

Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and having determined that it is necessary and warranted by conditions of good administration that certain positions in the Department of Agriculture continue to be excluded from the coverage of section 2302 of title 5, United States Code, and excepted from the competitive service because of their confidential, policy-determining, policy-making, or policy-advocating character, in order to ensure their deep involvement in the development and advocacy of Administration proposals and policies and to ensure their effective and vigorous implementation, and as a result of a reorganization of the Department of Agriculture carried out pursuant to Public Law 103-354 [7 U.S.C. 6901 et seq.], it is hereby ordered that subsection (c) of section 6.8 of Civil Service Rule VI (5 C.F.R. 6.8) is revised to read as follows:

“(c) Within the Department of Agriculture, positions the incumbents of which serve as State Executive Directors of the Consolidated Farm Service Agency and positions the incumbents of which serve as State Directors or State Directors-at-Large for Rural Economic and Community Development shall be listed in Schedule C for all grades of the General Schedule.”

This order supersedes Executive Order No. 12300.

WILLIAM J. CLINTON.

CROSS REFERENCES

President’s authority to prescribe regulations for the conduct of employees in the executive branch, see section 7301 of this title.

Removal and suspension of individuals in the competitive service for cause to promote the efficiency of the service, see section 7501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3304, 3361 of this title; title 25 section 2a.

§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

- (1) necessary exceptions of positions from the competitive service; and
- (2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 417; Pub. L. 95-228, §2(b), Feb. 10, 1978, 92 Stat. 25; Pub. L. 95-454, title VII, §703(c)(1), Oct. 13, 1978, 92 Stat. 1217; Pub. L. 96-54, §2(a)(16), Aug. 14, 1979, 93 Stat. 382; Pub. L. 103-94, §2(b)(1), Oct. 6, 1993, 107 Stat. 1004.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 633(1) (less function of Civil Service Commission), (2) 8 (last sentence).	Jan. 16, 1883, ch. 27, §2(1) (less function of Civil Service Commission), (2) 8 (last sentence), 22 Stat. 403, 404.

The reference to the competitive service is substituted for the reference to the Act creating that service. The reference to reasons for the exceptions is omitted as covered by section 1308 of this title. The words “provide for” are substituted for “provide and declare”. Paragraph (1) is supplied to preserve the President’s power to except positions from the competitive service, previously implied from the power to except from the first rule in former section 633(2). Authority to make exceptions to so much of former section 633(2) as is restated in this section and section 1302(a) is omitted as meaningless. Authority to make exceptions to so much of former section 633(2) as is restated in section 3318(a) is omitted as superseded by former section 857, which is carried into section 3318(a). In the last sentence, the words “Each officer and individual employed in an agency” are substituted for “officers of the United States in the departments and offices” because of the restrictive definition of “officer” in section 2104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1993—Par. (2). Pub. L. 103-94 substituted “and 7203” for “7203, 7321, and 7322”.

1979—Par. (2). Pub. L. 96-54 amended par. (2) in same manner as amendment by section 703(c)(1) of Pub. L. 95-454. See 1978 Amendment note below.

1978—Par. (2). Pub. L. 95-454 substituted “7202, 7203” for “7152, 7153”.

Pub. L. 95-228 struck out reference to section 3306(a)(1) of this title. Amendments by section 703(c)(1) and (c)(2) of Pub. L. 95-454 appear to have been inadvertently reversed. Subsec. (c)(1) purported to amend subsec. (c)(1) of section 2105 of this title, and subsec. (c)(2) purported to amend par. (2) of this section. However, the amendments specified by Pub. L. 95-454, §703(c)(1) and (2), were impossible to execute literally. Thus, amendment by Pub. L. 95-454, §703(c)(2) was executed to section 2105 of this title, and amendment by section 703(c)(1) was executed to this section as the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103-94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any pen-

alty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103-94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103-94 had not been enacted, see section 12 of Pub. L. 103-94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EX. ORD. NO. 11521. VETERANS READJUSTMENT APPOINTMENT FOR VETERANS OF VIETNAM ERA

Ex. Ord. No. 11521, Mar. 26, 1970, 35 F.R. 5311, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS this Nation has an obligation to assist veterans of the armed forces in readjusting to civilian life;

WHEREAS the Federal Government, as an employer, should reflect its recognition of this obligation in its personnel policies and practices;

WHEREAS veterans, by virtue of their military service, have lost opportunities to pursue education and training oriented toward civilian careers;

WHEREAS the Federal Government is continuously concerned with building an effective workforce, and veterans constitute a major recruiting source; and

WHEREAS the development of skills is most effectively achieved through a program combining employment with education or training:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by sections 3301 and 3302 of title 5, United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. (a) Subject to paragraph (b) of this section, the head of an agency may make an excepted appointment, to be known as a "veterans readjustment appointment", to any position in the competitive service up to and including GS-5 or the equivalent thereof, of a veteran or disabled veteran as defined in section 2108(1), (2), of title 5, United States Code, who:

(1) served on active duty in the armed forces of the United States during the Vietnam era;

(2) at the time of his appointment has completed not more than fourteen years of education; and

(3) is found qualified to perform the duties of the position.

(b) Employment under paragraph (a) of this section is authorized only under a training or educational program developed by an agency in accordance with guidelines established by the Office of Personnel Management.

(c) An employee given a veterans readjustment appointment under paragraph (a) of this section shall serve subject to:

(1) the satisfactory performance of assigned duties; and

(2) participation in the training or educational program under which he is appointed.

(d) An employee who does not satisfactorily meet the conditions set forth in paragraph (c) of this section shall be removed in accordance with appropriate procedures.

(e) An employee serving under a veterans readjustment appointment may be promoted, reassigned, or transferred.

(f) An employee who completes the training or educational program and who has satisfactorily completed

two years of substantially continuous service under a veterans readjustment appointment shall be converted to career-conditional or career employment. An employee converted under this paragraph shall automatically acquire a competitive status.

(g) In selecting an applicant for appointment under this section, an agency shall not discriminate because of race, color, religion, sex, national origin, or political affiliation.

SEC. 2. (a) A person eligible for appointment under section 1 of this order may be appointed only within one year after his separation from the armed forces, or one year following his release from hospitalization or treatment immediately following his separation from the armed forces, or one year after involuntary separation without cause from (i) a veterans readjustment appointment or (ii) a transitional appointment, or one year after the effective date of this order if he is serving under a transitional appointment.

(b) The Office of Personnel Management may determine the circumstances under which service under a transitional appointment may be deemed service under a veterans readjustment appointment for the purpose of paragraph (f) of section 1 of this order.

SEC. 3. Any law, Executive order, or regulation which would disqualify an applicant for appointment in the competitive service shall also disqualify a person otherwise eligible for appointment under section 1 of this order.

SEC. 4. For the purpose of this order:

(a) "agency" means a military department as defined in section 102 of title 5, United States Code, an executive agency (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and those portions of the legislative and judicial branches of the Federal Government and of the government of the District of Columbia having positions in the competitive service; and

(b) "Vietnam era" means the period beginning August 5, 1964, and ending on such date thereafter as may be determined by Presidential proclamation or concurrent resolution of the Congress.

SEC. 5. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the provisions of this order.

SEC. 6. Executive Order No. 11397 of February 9, 1968, is revoked. Such revocation shall not affect the right of an employee to be converted to career-conditional or career employment if he meets the requirements of section 1(d) of Executive Order No. 11397 after the effective date of this order.

SEC. 7. This order is effective 14 days after its date.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3304, 3361 of this title.

§ 3303. Political recommendations

(a) For the purposes of this section—

(1) "agency" means—

(A) an Executive agency; and

(B) an agency in the legislative branch with positions in the competitive service;

(2) "applicant" means an individual who has applied for appointment to be an employee;

(3) "employee" means an employee of an agency who is—

(A) in the competitive service;

(B) a career appointee in the Senior Executive Service or an employee under a similar appointment in a similar executive service; or

(C) in the excepted service other than—

(i) an employee who is appointed by the President; or

(ii) an employee whose position has been determined to be of a confidential, policy-

determining, policy-making, or policy-advocating character; and

(4) "personnel action" means any action described under clauses (i) through (x) of section 2302(a)(2)(A).

(b) Except as provided under subsection (f), each personnel action with respect to an employee or applicant shall be taken without regard to any recommendation or statement, oral or written, with respect to any employee or applicant who requests or is under consideration for such personnel action, made by—

(1) any Member of Congress or congressional employee;

(2) any elected official of the government of any State (including the District of Columbia and the Commonwealth of Puerto Rico), county, city, or other subdivision thereof;

(3) any official of a political party; or

(4) any other individual or organization making such recommendation or statement on the basis of the party affiliation of the employee or applicant.

(c) Except as provided under subsection (f), a person or organization referred to under subsection (b)(1) through (4) is prohibited from making or transmitting to any officer or employee of an agency, any recommendation or statement, oral or written, with respect to any employee or applicant who requests or is under consideration for any personnel action in such agency. Except as provided under subsection (f), the agency, or any officer or employee of the agency—

(1) shall not solicit, request, consider, or accept any such recommendation or statement; and

(2) shall return any such written recommendation or statement, appropriately marked as in violation of this section, to the person or organization transmitting the same.

(d) Except as provided under subsection (f), an employee or applicant who requests or is under consideration for a personnel action in an agency is prohibited from requesting or soliciting from a person or organization referred to under subsection (b)(1) through (4) a recommendation or statement.

(e) Under regulations prescribed by the Office of Personnel Management, the head of each agency shall ensure that employees and applicants are given notice of the provisions of this section.

(f) An agency, or any authorized officer or employee of an agency, may solicit, accept, and consider, and any other individual or organization may furnish or transmit to the agency or such authorized officer or employee, any statement with respect to an employee or applicant who requests or is under consideration for a personnel action, if—

(1) the statement is furnished pursuant to a request or requirement of the agency and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of the employee or applicant;

(2) the statement relates solely to the character and residence of the employee or applicant;

(3) the statement is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether the employee or applicant meets suitability or security standards;

(4) the statement is furnished by a former employer of the employee or applicant pursuant to a request of an agency, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such employee or applicant during employment with such former employer; or

(5) the statement is furnished pursuant to a provision of law or regulation authorizing consideration of such statement with respect to a specific position or category of positions.

(g) An agency shall take any action it determines necessary and proper under subchapter I or II of chapter 75 to enforce the provisions of this section.

(h) The provisions of this section shall not affect the right of any employee to petition Congress as authorized by section 7211.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 103-94, §8(a), Oct. 6, 1993, 107 Stat. 1006.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 642.	Jan. 16, 1883, ch. 27, §10, 22 Stat. 406.

The prohibition is restated in positive form. The words "An individual concerned in examining an applicant for or appointing him in the competitive service" are substituted for "any person concerned in making any examination or appointment under this act". The word "applicant" is substituted for "person who shall apply for office or place under the provisions of this act". The word "Representative" is substituted for "Member of the House of Representatives".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1993—Pub. L. 103-94 substituted "Political recommendations" for "Competitive service; recommendations of Senators or Representatives" as section catchline and amended text generally. Prior to amendment, text read as follows: "An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant."

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103-94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103-94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103-94 had not been enacted, see section 12 of Pub. L. 103-94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2302 of this title; title 38 section 7403.

§ 3304. Competitive service; examinations

(a) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, for—

(1) open, competitive examinations for testing applicants for appointment in the competitive service which are practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointment sought; and

(2) noncompetitive examinations when competent applicants do not compete after notice has been given of the existence of the vacancy.

(b) An individual may be appointed in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This subsection does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

(c) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served—

(1) for at least 3 years in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

(2) for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States;

acquires a competitive status for transfer to the competitive service if he is involuntarily separated without prejudice from the legislative or judicial branch, passes a suitable noncompetitive examination, and transfers to the competitive service within 1 year of the separation from the legislative or judicial branch. For the purpose of this subsection, an individual who has served for at least 2 years in a position in the legislative branch described by paragraph (1) of this subsection and who is separated from that position to enter the armed forces is deemed to have held that position during his service in the armed forces.

(d)(1) For the purpose of this subsection, the term “technician” has the meaning given such term by section 8337(h)(1) of this title.

(2) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served for at least 3 years as a technician acquires a competitive status for transfer to the competitive service if such individual—

(A) is involuntarily separated from service as a technician other than by removal for cause on charges of misconduct or delinquency;

(B) passes a suitable noncompetitive examination; and

(C) transfers to the competitive service within 1 year after separating from service as a technician.

(e) Employees at any place outside the District of Columbia where the President or the Office of Personnel Management directs that examinations be held shall allow the reasonable use of public buildings for, and in all proper ways facilitate, holding the examinations.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 95-454, title IX, §906(a)(5), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 99-586, Oct. 29, 1986, 100 Stat. 3325; Pub. L. 104-65, §§16(a), (b), 17(a), Dec. 19, 1995, 109 Stat. 703.)

AMENDMENT OF SECTION

Pub. L. 104-65, §16, Dec. 19, 1995, 109 Stat. 703, provided that, effective 2 years after Dec. 19, 1995, this section is amended by repealing subsection (c) of this section and redesignating subsection (d) as (c).

Pub. L. 104-65, §17, Dec. 19, 1995, 109 Stat. 703, provided that, effective 2 years after Dec. 19, 1995, with certain exceptions, this section is amended by adding at the end thereof the following new subsection:

(d) The Office of Personnel Management shall promulgate regulations on the manner and extent that experience of an individual in a position other than the competitive service, such as the excepted service (as defined under section 2103) in the legislative or judicial branch, or in any private or non-profit enterprise, may be considered in making appointments to a position in the competitive service (as defined under section 2102). In promulgating such regulations OPM shall not grant any preference based on the fact of service in the legislative or judicial branch. The regulations shall be consistent with the principles of equitable competition and merit based appointments.

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 633(2)1. 5 U.S.C. 633(2)7 (less last 17 words).	Jan. 16, 1883, ch. 27, §2(2)1, 22 Stat. 403. Jan. 16, 1883, ch. 27, §2(2)7 (less last 17 words), 22 Stat. 404.
(b)	5 U.S.C. 638 (as applicable to appointment).	Jan. 16, 1883, ch. 27, §7 (as applicable to appointment), 22 Stat. 406.
(c)	5 U.S.C. 631b(b). 5 U.S.C. 631b(c).	Nov. 26, 1940, ch. 919, §2(b), 54 Stat. 1212. Feb. 12, 1946, ch. 3, 60 Stat. 3. May 29, 1958, Pub. L. 85-432, §5, 72 Stat. 151. June 24, 1952, ch. 456, 66 Stat. 155.
(d)	5 U.S.C. 635 (7th sentence).	Jan. 16, 1883, ch. 27, §3 (7th sentence), 22 Stat. 404.

In subsection (a), the authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. The words “competitive service” are substituted for “public service” since the requirements do not apply to the excepted or uniformed service.

In subsection (b), the words “That after the expiration of six months from the passage of this act” are omitted as executed. The words “in the competitive service” are substituted for “in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules” because of the definition of “competitive service” in section 2102. In the second sentence, the words “the provisions of this title governing the competitive service” are substituted for “this act”.

In subsection (c), the provisions of former section 631b(b) and (c) are combined and restated for clarity. The words “From and after the effective date of this Act” and “From and after the date of approval of this Act” are omitted as executed. The words “competitive service” are substituted for “classified civil service” in view of the definition of “competitive service” in section 2102. The words “or as a clerical employee of the Senate or House of Representatives” are omitted as included in the reference to “an individual . . . in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Clerk of the House of Representatives”. The words “and nothing in this Act shall be construed to impair any right of retransfer provided for under civil service laws or regulations made thereunder” are omitted as unnecessary.

In subsection (d), the word “Employees” is substituted for “collector, postmaster, and other officers of the United States”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1986—Subsecs. (d), (e). Pub. L. 99-586 added subsec. (d) and redesignated former subsec. (d) as (e).

1978—Subsec. (d). Pub. L. 95-454 substituted “the Office of Personnel Management” for “a Civil Service Commission board of examiners”.

EFFECTIVE DATE OF 1995 AMENDMENT

Section 16(c) of Pub. L. 104-65 provided that: “The repeal and amendment made by this section [amending this section] shall take effect 2 years after the date of the enactment of this Act [Dec. 19, 1995].”

Section 17(b) of Pub. L. 104-65 provided that: “The amendment made by this section [amending this section] shall take effect 2 years after the date of the enactment of this Act [Dec. 19, 1995], except the Office of Personnel Management shall—

“(1) conduct a study on excepted service considerations for competitive service appointments relating to such amendment; and

“(2) take all necessary actions for the regulations described under such amendment to take effect as final regulations on the effective date of this section.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

CROSS REFERENCES

President’s power to grant exceptions from provisions of subsec. (a) of this section, see section 3302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3302 of this title; title 22 section 3008; title 40 section 42.

§ 3304a. Competitive service; career appointment after 3 years’ temporary service

(a) An individual serving in a position in the competitive service under an indefinite appointment or a temporary appointment pending es-

tablishment of a register (other than an individual serving under an overseas limited appointment, or in a position classified above GS-15 pursuant to section 5108) acquires competitive status and is entitled to have his appointment converted to a career appointment, without condition, when—

(1) he completes, without break in service of more than 30 days, a total of at least 3 years of service in such a position;

(2) he passes a suitable noncompetitive examination;

(3) the appointing authority (A) recommends to the Office of Personnel Management that the appointment of the individual be converted to a career appointment and (B) certifies to the Office that the work performance of the individual for the past 12 months has been satisfactory; and

(4) he meets Office qualification requirements for the position and is otherwise eligible for career appointment.

(b) The employing agency shall terminate the appointment of an individual serving in a position in the competitive service under an indefinite or temporary appointment described in subsection (a) of this section, not later than 90 days after he has completed the 3-year period referred to in subsection (a)(1) of this section, if, prior to the close of such 90-day period, such individual has not met the requirements and conditions of subparagraphs (2) to (4), inclusive, of subsection (a) of this section.

(c) In computing years of service under subsection (a)(1) of this section for an individual who leaves a position in the competitive service to enter the armed forces and is reemployed in such a position within 120 days after separation under honorable conditions, the period from the date he leaves his position to the date he is reemployed is included.

(d) The Office of Personnel Management may prescribe regulations necessary for the administration of this section.

(Added Pub. L. 90-105, §1(a), Oct. 11, 1967, 81 Stat. 273; amended Pub. L. 91-375, §6(c)(6), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 101-509, title V, §529 [title I, §101(b)(9)(B)], Nov. 5, 1990, 104 Stat. 1427, 1441.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-509, which directed the substitution of “in a position classified above GS-15 pursuant to section 5108)” for “in GS-16, 17, or 18)”, was executed by making the substitution for “in GS-16, GS-17, or GS-18)”, as the probable intent of Congress.

1978—Subsec. (a). Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

Subsec. (d). Pub. L. 95-454, §906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission”.

1970—Subsec. (a). Pub. L. 91-375 struck out “, in the postal field service,” after “limited appointment” in introductory parenthetical text.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990,

see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE

Section 4 of Pub. L. 90-105 provided that:
“(a) This section and section 3 of this Act [amending provisions set out as a note under section 3101 of this title] shall become effective on the date of enactment of this Act [Oct. 11, 1967].

“(b) Subject to subsection (c) of this section, the first section and section 2 of this Act [enacting this section and section 3303 of former Title 39, The Postal Service] shall become effective on the one hundred and twentieth day following the date of enactment of this Act [Oct. 11, 1967].

“(c) For the purpose of the application of section 3304a(b) of title 5, United States Code, as enacted by this Act, in the case of an individual who, prior to the effective date prescribed by subsection (b) of this section, shall have completed the 3-year period referred to in such section 3304a(b), such individual shall be deemed to have completed such 3-year period on such effective date.”

§ 3305. Competitive service; examinations; when held

(a) The Office of Personnel Management shall hold examinations for the competitive service at least twice a year in each State and territory or possession of the United States where there are individuals to be examined.

(b) The Office shall hold an examination for a position to which an appointment has been made within the preceding 3 years, on the application of an individual who qualifies as a preference eligible under section 2108(3)(C)-(G) of this title. The examination shall be held during the quarter following the application.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 90-83, §1(8), Sept. 11, 1967, 81 Stat. 197; Pub. L. 96-54, §2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 635 (last 24 words of 6th sentence).	Jan. 16, 1883, ch. 27, §3 (last 24 words of 6th sentence), 22 Stat. 404.
(b)	5 U.S.C. 859.	June 27, 1944, ch. 287, §10, 58 Stat. 390. Jan. 19, 1948, ch. 1, §3, 62 Stat. 3. Dec. 27, 1950, ch. 1151, §2(b), 64 Stat. 1117.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends various sections [§§ 3305, 3309, 3318] of title 5, United States Code, to reflect the red-

esignation of paragraphs (3)(B) through (F) of section 2108 of title 5 as paragraphs (3)(C) through (G) by section 1(6) of this bill.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-54, §2(a)(14), substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (b). Pub. L. 96-54, §2(a)(15), substituted “Office” for “Commission”.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1438; title 40 section 42.

§ 3306. Repealed. Pub. L. 95-228, § 1, Feb. 10, 1978, 92 Stat. 25]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419, related to apportionment of appointments in the departmental service in the District of Columbia among the States, territories, etc.

§ 3307. Competitive service; maximum-age entrance requirements; exceptions

(a) Except as provided in subsections (b), (c), and (d) of this section appropriated funds may not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

(b) The Secretary may, with the concurrence of such agent as the President may designate, determine and fix the maximum limit of age within which an original appointment to a position as an air traffic controller may be made.

(c) The Secretary of the Interior may determine and fix the minimum and maximum limits of age within which original appointments to the United States Park Police may be made.

(d) The head of any agency may determine and fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or firefighter, as defined by section 8331(20) and (21), respectively, of this title.

(e) The head of an agency may determine and fix the maximum age limit for an original appointment to a position as a firefighter or law enforcement officer, as defined by section 8401(14) or (17), respectively, of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419; Pub. L. 92-297, §2(a), May 16, 1972, 86 Stat. 141; Pub. L. 93-350, §1, July 12, 1974, 88 Stat. 355; Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 100-238, title I, §103(a)(1), Jan. 8, 1988, 101 Stat. 1744.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 638b (less proviso).	June 27, 1956, ch. 452, §302 (less proviso), 70 Stat. 355.

The prohibition is restated in positive form. The word “officers” is omitted as included in “employees” in view of the definition of “employee” in section 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

For definition of Secretary, referred to in subsec. (b), see section 2109 of this title.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100-238, §103(a)(1)(A), substituted “may” for “may, with the concurrence of such agent as the President may designate.”.

Subsec. (e). Pub. L. 100-238, §103(a)(1)(B), added subsec. (e).

1980—Subsec. (b). Pub. L. 96-347 substituted “Secretary” for “Secretary of Transportation”.

1974—Subsec. (a). Pub. L. 93-350, §1(1), inserted reference to subsec. (d).

Subsec. (d). Pub. L. 93-350, §1(2), added subsec. (d).

1972—Pub. L. 92-297 designated existing provisions as subsec. (a) and added subssecs. (b) and (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 103(f) of Pub. L. 100-238 provided that: “This section, and the amendments made by this section [amending this section and sections 8401 and 8704 of this title and enacting provisions set out as a note under section 8334 of this title], shall be effective as of January 1, 1987.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 7 of Pub. L. 93-350 provided that: “The amendments made by the first section [amending this section], and sections 2(b), 5, and 6 [amending sections 8331, 8336, and 8339 of this title], of this Act shall become effective on the date of enactment of this Act [July 12, 1974]. The amendments made by sections 2(a) and 3 [amending sections 8331 and 8334 of this title] of this Act shall become effective at the beginning of the first applicable pay period which begins after December 31, 1974. The amendment made by section 4 of this Act [amending section 8335 of this title] shall become effective on January 1, 1978.”

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

UNITED STATES PARK POLICE; AGE LIMITS FOR ORIGINAL APPOINTMENTS

Pub. L. 91-73, Sept. 26, 1969, 83 Stat. 116, which provided for age limits for appointments to the United States Park Police, was repealed by Pub. L. 92-297, §11, May 16, 1972, 86 Stat. 145, effective at the end of the 89th day after May 16, 1972. The Secretary of the Interior may fix age limits for appointment under subsec. (c) of this section.

EX. ORD. NO. 11817. OFFICE OF PERSONNEL MANAGEMENT DESIGNATED AGENT TO CONCUR WITH AGENCY DETERMINATION FIXING AGE LIMITS FOR MAKING ORIGINAL APPOINTMENTS RESPECTING LAW ENFORCEMENT OFFICER AND FIREFIGHTER POSITIONS

Ex. Ord. No. 11817, Nov. 5, 1974, 39 F.R. 39427, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 3307(d) of title 5 of the United States Code, as added by the first section of the Act of July 12, 1974 (Public Law 93-350; 88 Stat. 355), I hereby designate the Office of Personnel Management as the agency to concur with determinations made by agencies to fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or firefighter, as defined by section

8331(20) and (21), respectively, of title 5 of the United States Code. The designation made by this order shall be effective as of October 15, 1974.

§ 3308. Competitive service; examinations; educational requirements prohibited; exceptions

The Office of Personnel Management or other examining agency may not prescribe a minimum educational requirement for an examination for the competitive service except when the Office decides that the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education. The Office shall make the reasons for its decision under this section a part of its public records.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 854 (less 1st 2 sentences).	June 27, 1944, ch. 287, §5 (less 1st 2 sentences), 58 Stat. 388.

The prohibition is restated in positive form. The words “The Civil Service Commission or other examining agency” are added because these are the only agencies to which the prohibition could apply.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438.

§ 3309. Preference eligibles; examinations; additional points for

A preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to additional points above his earned rating, as follows—

- (1) a preference eligible under section 2108(3)(C)–(G) of this title—10 points; and
- (2) a preference eligible under section 2108(3)(A) of this title—5 points.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419; Pub. L. 90-83, §1(8), Sept. 11, 1967, 81 Stat. 197.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 852 (1st sentence).	June 27, 1944, ch. 287, §3 (less proviso), 58 Stat. 388. Jan. 19, 1948, ch. 1, §2, 62 Stat. 3. Dec. 27, 1950, ch. 1151, §2(a), 64 Stat. 1117. July 14, 1952, ch. 728, §2, 66 Stat. 627.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
		Aug. 14, 1953, ch. 485, §1(a) "Sec. 3 (1st sentence)", 67 Stat. 581.

The word "competitive" is added before "service" for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1967—Cl. (1). Pub. L. 90-83 substituted "section 2108(3)(C)-(G)" for "section 2108(3)(B)-(F)." See Historical and Revision Notes under section 3305 of this title.

CROSS REFERENCES

Definition of preference eligibles, see section 2108 of this title.

Points granted by this section to be included in determining order of entry on registers and lists of eligibles, see section 3313 of this title.

Regulations for administration of provisions giving preference to preference eligibles, see section 1302 of this title.

Seniority not affected by transfer of postal ten-point preference eligibles, see section 1005 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3313, 3320 of this title; title 22 section 1438.

§ 3310. Preference eligibles; examinations; guards, elevator operators, messengers, and custodians

In examinations for positions of guards, elevator operators, messengers, and custodians in the competitive service, competition is restricted to preference eligibles as long as preference eligibles are available.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 852 (2d sentence).	June 27, 1944, ch. 287, §3 (proviso), 58 Stat. 388. Aug. 14, 1953, ch. 485, §1(a) "Sec. 3 (2d sentence)", 67 Stat. 581.

The words "in the competitive service" are added for clarity. The reference to "examinations held prior to December 31, 1954, for positions of apprentices" is omitted as obsolete. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Restriction on contract for services, see section 490c of Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438.

§ 3311. Preference eligibles; examinations; credit-ing experience

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

(1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and

(2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 853.	June 27, 1944, ch. 287, §4, 58 Stat. 388.

The words "for the competitive service" are added after "examinations" for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

In paragraph (1), the words "service in the armed forces" are substituted for "in the military or naval service of the United States" on authority of the Act of July 26, 1947, ch. 343, §305(a), 61 Stat. 508. The word "actual" is omitted as surplusage.

In paragraph (2), the words "material to the position for which examined" are substituted for "valuable" for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438.

§ 3312. Preference eligibles; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for examination for, appointment in, or reinstatement in the competitive service, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to

respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420; Pub. L. 95-454, title III, §307(c), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1148, 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 854 (1st 2 sentences, less so much as relates to promotion, retention, and transfer).	June 27, 1944, ch. 287, §5 (1st 2 sentences, less so much as relates to promotion, retention, and transfer), 58 Stat. 388.

The section is restated for clarity and conciseness. The words "for which examination is given" and "for which the examination is given" are omitted as surplusage. The application of this section to the excepted service in the executive branch and the government of the District of Columbia is preserved by section 3320.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 designated existing provisions as subsec. (a), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438.

§ 3313. Competitive service; registers of eligibles

The names of applicants who have qualified in examinations for the competitive service shall be entered on appropriate registers or lists of eligibles in the following order—

(1) for scientific and professional positions in GS-9 or higher, in the order of their ratings, including points added under section 3309 of this title; and

(2) for all other positions—

(A) disabled veterans who have a compensable service-connected disability of 10 percent or more, in order of their ratings, including points added under section 3309 of this title; and

(B) remaining applicants, in the order of their ratings, including points added under section 3309 of this title.

The names of preference eligibles shall be entered ahead of others having the same rating.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 856.	June 27, 1944, 287, §7, 58 Stat. 389. Aug. 14, 1953, ch. 485, §1(b), 67 Stat. 581.

The section is restated for clarity and conciseness. The words "for the competitive service" are added for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia is carried into section 3320. The words "employment lists" are omitted as included in "appropriate registers or lists of eligibles".

In paragraph (1), the words "in GS-9 or higher" are substituted for "in grade 9 or higher of the General Schedule of the Classification Act of 1949, as amended" in view of the codification of the Act in this title, and, in specific sections 5104 and 5332.

In paragraph (2)(A), the term "disabled veterans" is substituted for "preference eligibles" in view of the definition of "disabled veteran" in section 2108(2).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3314, 3315, 3320 of this title; title 22 section 1438.

§ 3314. Registers; preference eligibles who resigned

A preference eligible who resigns, on request to the Office of Personnel Management, is entitled to have his name placed again on all registers for which he may have been qualified, in the order named by section 3313 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 865.	June 27, 1944, ch. 287, §16, 58 Stat. 391.

The last 28 words of former section 865 relating to recertification and reappointments are omitted since under sections 3317 and 3318(a) certification and appointment follow from placing on registers.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438.

§ 3315. Registers; preference eligibles furloughed or separated

(a) A preference eligible who has been separated or furloughed without delinquency or misconduct, on request, is entitled to have his name placed on appropriate registers and employment lists for every position for which his qualifications have been established, in the order named by section 3313 of this title. This subsection applies to registers and employment lists maintained by the Office of Personnel Management, an Executive agency, or the government of the District of Columbia.

(b) The Office may declare a preference eligible who has been separated or furloughed without pay under section 7512 of this title to be entitled to the benefits of subsection (a) of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420; Pub. L. 96-54, § 2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 864 (1st sentence).	June 27, 1944, ch. 287 § 15 (1st sentence), 58 Stat. 391.
(b)	5 U.S.C. 863 (2d proviso).	June 27, 1944, ch. 287, § 14 (2d proviso), 58 Stat. 391.

In subsection (a), the term “Executive agency” is substituted for “any agency or project of the Federal Government” on authority of former section 869. The last 28 words of the 1st sentence of former section 864 relating to recertification and reappointment are omitted since under sections 3317 and 3318(a) certification and appointment follow from placing on registers.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-54, § 2(a)(14), substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (b). Pub. L. 96-54, § 2(a)(15), substituted “Office” for “Commission”.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438.

[§ 3315a. Repealed. Pub. L. 93-416, § 22(c), Sept. 7, 1974, 88 Stat. 1150]

Section, added Pub. L. 90-83 § 1(9)(A), Sept. 11, 1967, 81 Stat. 197, related to registration by Civil Service Commission of employees receiving compensation for injuries for certification for appointment to vacant positions.

§ 3316. Preference eligibles; reinstatement

On request of an appointing authority, a preference eligible who has resigned or who has been dismissed or furloughed may be certified for, and appointed to, a position for which he is eligible in the competitive service, an Executive agency, or the government of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 862.	June 27, 1944, ch. 287, § 13, 58 Stat. 390.

The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are substituted for “in the civil service, Federal, or District of Columbia, or in any establishment, agency, bureau, administration, project, or department, temporary or permanent” on authority of former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438.

§ 3317. Competitive service; certification from registers

(a) The Office of Personnel Management shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.

(b) When an appointing authority, for reasons considered sufficient by the Office, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421; Pub. L. 95-454, title IX, § 906(a)(3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, § 2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 857 (1st sentence and 2d proviso).	June 27, 1944, ch. 287, § 8 (1st sentence and 2d proviso), 58 Stat. 389.

In subsection (a), the word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1). The words “in the competitive service” have been added for clarity. Application of the section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

In subsection (b), the word “thereafter” is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-54, § 2(a)(14), substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (b). Pub. L. 96-54, § 2(a)(15), amended subsec. (b) in same manner as amendment by Pub. L. 95-454. See 1978 Amendment note set out below.

1978—Subsec. (b). Pub. L. 95-454 which purported to amend section 3317b of this title by substituting “Office” for “Commission” was executed to subsec. (b) of this section as the probable intent of Congress.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3110, 3318, 3320 of this title; title 22 section 1438.

§ 3318. Competitive service; selection from certificates

(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.

(b)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.

(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of—

(A) the reasons submitted by the appointing authority in support of the proposed passover, and

(B) the findings of the Office.

(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.

(c) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3)(C)–(G) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421; Pub. L. 90-83, §1(8), Sept. 11, 1967, 81 Stat. 197; Pub. L. 95-454, title III, §307(d), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1148, 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a), (b)	5 U.S.C. 633(2)2. 5 U.S.C. 857 (less 1st sentence, 2d proviso, and last sentence).	Jan. 16, 1883, ch. 27, §2(2), 22 Stat. 404. June 27, 1944, ch. 287, §8 (less 1st sentence, 2d proviso, and last sentence), 58 Stat. 389. Aug. 14, 1953, ch. 485, §2, 67 Stat. 582.
(c)	5 U.S.C. 864 (less 1st sentence).	June 27, 1944, ch. 287, §15 (less 1st sentence), 58 Stat. 391.

The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (a), the provisions of former section 633(2)2 are merged in the requirement of former section 857, since the certificate must be of the three highest on the register and the nominating or appointing employee may select one of the three.

In subsection (c), the prohibition in former section 864 is restated in positive form. The words “an individual who qualifies as a preference eligible under section 2108(3)(B)–(F)” are substituted for “ten-point preference eligibles”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

Subsec. (b). Pub. L. 95-454, §307(d), designated existing provisions as par. (1), substituted provisions respecting authority of the Office with respect to the selection procedures applicable, for provisions respecting authority of the Commission with respect to the selection procedures applicable, and added pars. (2) to (4).

1967—Subsec. (c). Pub. L. 90-83 substituted “section 2108(3)(C)–(G)” for “section 2108(3)(B)–(F).” See Historical and Revision Notes under section 3305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438.

§ 3319. Repealed. Pub. L. 95-454, title III, § 307(h)(1), Oct. 13, 1978, 92 Stat. 1149]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421, related to prohibitions on employment of members of same family in the competitive service.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3320. Excepted service; government of the District of Columbia; selection

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 858.	June 27, 1944, ch. 287, §9, 58 Stat. 389.
.....	5 U.S.C. 869.	June 27, 1944, ch. 287, §20, 58 Stat. 391.

Former sections 858 and 869 are combined and restated for clarity and to conform to section 3318(a). The word "authority" is substituted for "officer" in recognition of the several appointing authorities named in section 2105(a)(1). The words "shall select for appointment to each vacancy in the expected service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title" are substituted for "In the unclassified Federal, and District of Columbia, civil service, and in all other positions and employment hereinbefore referred to in (c) of section 851 of this title . . . shall make selection from the qualified applicants in accordance with the provisions of this chapter". The reference to the excepted service "in the executive branch" is substituted for the exception of the legislative and judicial branches in former section 869. Former section 869 did not prohibit the application of those provisions of the Act of June 27, 1944, which relate to the competitive service in the legislative or judicial branch by reason of the specific provisions of section 311 of the Act of June 10, 1921, as amended (31 U.S.C. 52); 28 U.S.C. 602; and Executive Order No. 67 of June 13, 1895. The reference to appointments of postmasters is omitted from this section since those referred to are in the competitive service. The application of former section 869 to the remainder of the Act of June 27, 1944, is covered by the sections into which the remainder is carried (see Table I).

This section merely continues, and does not in any way change, the requirements in former section 858 relative to the selection of applicants for positions in the excepted service. Under this section, the Federal Bureau of Investigation and other agencies having positions in the excepted service will continue to fill those positions in the same manner that they have been filled under former section 858. Such excepted appointments are appointments authorized to be made without regard to the statutes, rules, and regulations governing appointments in the competitive service and this is not changed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

ASSISTANCE OF UNITED STATES CIVIL SERVICE COMMISSION IN DEVELOPING MERIT SYSTEM FOR DISTRICT OF COLUMBIA

Pub. L. 93-198, title VII, §734, Dec. 24, 1973, 87 Stat. 823, authorized the United States Civil Service Commission to advise and assist the District of Columbia Mayor and Council in the further development of the merit system or systems required by the District of Columbia charter, which was approved on May 7, 1974, and authorized the Commission to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed, with the costs of any specific services furnished by the Civil Service Commission to be compensated for under the provisions of section 685a of former Title 31, Money and Finance [31 U.S.C. 1537].

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1438.

§ 3321. Competitive service; probationary period

(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—

- (1) before an appointment in the competitive service becomes final; and
- (2) before initial appointment as a supervisor or manager becomes final.

(b) An individual—

- (1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and
- (2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.

(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 95-454, title III, §303(a), Oct. 13, 1978, 92 Stat. 1146; Pub. L. 100-325, §2(d), May 30, 1988, 102 Stat. 581.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 633(2)4.	Jan. 16, 1883, ch. 27. §2(2)4, 22 Stat. 404.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. Wording is changed because in practice an appointment is not made after probation. The words "or employment" are omitted as included within "appointment".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Pub. L. 95-454 substituted “probationary period” for “probation; period of” in section catchline, designated existing provisions as subsec. (a), substituted provisions authorizing the President to take necessary action, for provisions authorizing the President to prescribe rules, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

CROSS REFERENCES

President’s power to grant exceptions from provisions of this section, see section 3302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3302, 4303, 7512 of this title.

[§ 3322. Repealed. Pub. L. 95-256, § 5(b)(1), Apr. 6, 1978, 92 Stat. 191]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422, related to temporary appointments after age 70 in the competitive service.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 30, 1978, see section 5(f) of Pub. L. 95-256, set out as an Effective Date of 1978 Amendment note under section 633a of Title 29, Labor.

§ 3323. Automatic separations; reappointment; re-employment of annuitants

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b)(1) Notwithstanding other statutes, an annuitant, as defined by section 8331 or 8401, receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which the annuitant is qualified. An annuitant so reemployed, other than an annuitant reappointed under paragraph (2) of this subsection, serves at the will of the appointing authority.

(2) Subject to such regulations as the Director of the Office of Personnel Management may prescribe, any annuitant to whom the first sentence of paragraph (1) of this subsection applies and who has served as an administrative law judge pursuant to an appointment under section 3105 of this title may be reappointed an administrative law judge under such section for a specified period or for such period as may be necessary for

such administrative law judge to conduct and complete the hearing and disposition of one or more specified cases. The provisions of this title that apply to or with respect to administrative law judges appointed under section 3105 of this title shall apply to or with respect to administrative law judges reappointed under such section pursuant to the first sentence of this paragraph.

(c) Notwithstanding subsection (a) of this section, a member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980 is not barred by reason of his retired status from employment in a position in the civil service for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(d) Notwithstanding subsection (a) of this section, the Chief of Engineers of the Army, under section 569a of title 33, may employ a retired employee whose expert assistance is needed in connection with river and harbor or flood control works. There shall be deducted from the pay of an employee so reemployed an amount equal to the annuity or retired pay allocable to the period of actual employment.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 96-465, title II, §2314(a), Oct. 17, 1980, 94 Stat. 2167; Pub. L. 98-224, §2, Mar. 2, 1984, 98 Stat. 47; Pub. L. 102-378, §2(10), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 715a.	June 30, 1932, ch. 314, §204, 47 Stat. 404.
(b)	5 U.S.C. 2263(a).	July 31, 1956, ch. 804, §401 “Sec. 13(a)”, 70 Stat. 757.
(c)	22 U.S.C. 915(c).	Sept. 8, 1960, Pub. L. 86-723, §10(d), 74 Stat. 832.
(d)	33 U.S.C. 544a, 701l.	June 20, 1938, ch. 535, §5, 52 Stat. 805.

In subsection (a), the words “On and after July 1, 1932” are omitted as executed. The words “heretofore or hereafter” are omitted as unnecessary. The words “in the civil service” are substituted for “civilian service in any branch or service of the United States Government” and “to any appointive office, position, or employment under the United States” in view of the definition of “civil service” in section 2101.

In subsection (b), the words “receiving annuity from the Civil Service Retirement and Disability Fund” are substituted for “heretofore or hereafter retired under this chapter”. The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (c), the words “Notwithstanding subsection (a) of this section” are substituted for “Notwithstanding the provisions of sections 62 and 715a of title 5” to reflect the codification of former section 715a in subsection (a) of this section and in view of the repeal of section 62 of title 5 by §402(a)(7) of the Act of Aug. 19, 1964, Pub. L. 88-448, 78 Stat. 492. The words “heretofore or hereafter” and “hereafter” are omitted as unnecessary. The words “in a position in the civil service” are substituted for “in Federal Government service in any appointive position” in view of the definition of “civil service” in section 2101. The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (d), the words “Notwithstanding subsection (a) of this section” are substituted for “The provisions of section 715a of title 5 shall not be so con-

strued as to prevent” to reflect the codification of former section 715a in subsection (a) of this section, and to conform to the style of this section. The words “under section 569a of title 33” are substituted for “under agreement as authorized by sections 569a, 584a and 607a of title 33” on authority of the provision contained in section 569a of title 33. The word “employee” is coextensive with and substituted for “civilian employee” in view of the definition of “employee” in section 2105. The last sentence is restated for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 812 of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 4052 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-378 substituted “annuitant, as defined by section 8331 or 8401,” for “annuitant as defined by section 8331 of this title”.

1984—Subsec. (b). Pub. L. 98-224 designated existing provisions as par. (1), substituted “the annuitant” for “he” and inserted “, other than an annuitant reappointed under paragraph (2) of this subsection,” and added par. (2).

1980—Subsec. (c). Pub. L. 96-465 substituted “member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980” for “Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

Mandatory separation, see section 8335 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 2386, 2512, 2584.

§ 3324. Appointments to positions classified above GS-15

(a) An appointment to a position classified above GS-15 pursuant to section 5108 may be made only on approval of the qualifications of the proposed appointee by the Office of Personnel Management. This section does not apply to a position—

(1) to which appointment is made by the Chief Judge of the United States Tax Court;

(2) to which appointment is made by the President;

(3) to which appointment is made by the Librarian of Congress; or

(4) the incumbent of which is paid from—

(A) appropriations for the Executive Office of the President under the heading “The White House Office”, “Special Projects”, “Council of Economic Advisers”, or “National Security Council”; or

(B) funds appropriated to the President under the heading “Emergency Fund for the President” by the Treasury, Post Office, and Executive Office Appropriation Act, 1966, or a later statute making appropriations for the same purpose.

(b) The Office may prescribe regulations necessary for the administration of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 90-83, §1(10), Sept. 11, 1967, 81 Stat. 197; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(17), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101-509, title V, §529 [title I, §101(b)(9)(C)(i), (ii)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 102-378, §2(11), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES 1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 1105(i).	June 20, 1958, Pub. L. 85-462, §10 “(i)”, 72 Stat. 213. Sept. 13, 1960, Pub. L. 86-768, 74 Stat. 910.

In subsection (a), the words “in GS-16, 17, and 18” are substituted for “in grades 16, 17, and 18 of the General Schedule”.

In subsection (a)(2), the words “by the President” are coextensive with and substituted for “by the President alone or by the President by and with the advice and consent of the Senate”.

In subsection (a)(4)(A), the words “Office of Emergency Planning” are substituted for “Office of Defense Mobilization” on authority of 1958 Reorg. Plan No. 1, §2(a), effective July 1, 1958, 72 Stat. 1799, as amended Aug. 26, 1958, Pub. L. 85-763, 72 Stat. 861, and Sept. 22, 1961, Pub. L. 87-296, 75 Stat. 630. Reference to “President’s Advisory Committee on Government Organization” is omitted since the Committee was abolished by Executive Order No. 10917, February 10, 1961.

In subsection (a)(4)(B), the words “‘Emergency Fund for the President’ by the Treasury, Post Office, and Executive Office Appropriation Act, 1966” are substituted for “‘Emergency Fund for the President, National Defense’ by the General Government Matters Appropriation Act, 1959” to reflect the heading and title of the current appropriation Act.

Subsection (b) is added on authority of former sections 1072 and 1072a, which are carried into section 5115.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 3324(a)(4)(A) to correct typographical errors.

REFERENCES IN TEXT

The Treasury, Post Office, and Executive Office Appropriation Act, 1966, referred to in subsec. (a)(4)(B), is Pub. L. 89-57, June 30, 1965, 79 Stat. 196. For classification of this Act to the Code, see Tables.

AMENDMENTS

1992—Pub. L. 102-378, §2(11)(A), substituted “GS-15” for “GA-15” in section catchline.

Subsec. (a)(1). Pub. L. 102-378, §2(11)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “provided for in section 5108(c)(2) of this title;”.

1990—Pub. L. 101-509, §529 [title I, §101(b)(9)(C)(ii)], which directed that “to positions classified above GA-15” be substituted for “at GS-16, 17, or 18” in section catchline, was executed by making the substitution for “at GS-16, 17, and 18”, as the probable intent of Congress.

Subsec. (a). Pub. L. 101-509, §529 [title I, §101(b)(9)(C)(i)], substituted “classified above GS-15 pursuant to section 5108” for “in GS-16, 17, or 18”.

1979—Subsec. (a)(4)(A). Pub. L. 96-54 struck out reference to Office of Emergency Planning.

1978—Subsecs. (a), (b). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective May 4, 1991, see section 9(b)(4) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90-83, set out as a note under section 5102 of this title.

CROSS REFERENCES

Antidiscrimination in employment in administration of this section, see section 7201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1212, 7204 of this title; title 10 sections 4540, 7212, 9540; title 20 section 3461; title 42 section 7231.

§ 3325. Appointments to scientific and professional positions

(a) Positions established under section 3104 of this title are in the competitive service. However, appointments to the positions are made without competitive examination on approval of the qualifications of the proposed appointee by the Office of Personnel Management or its designee for this purpose.

(b) This section does not apply to positions established under section 3104(c).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 423; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 102-378, §2(12), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 1162(a).	Oct. 4, 1961, Pub. L. 87-367, §202 "Sec. 2(a)", 75 Stat. 790.
(b)	5 U.S.C. 1161 (g) (2d sentence).	Oct. 11, 1962, Pub. L. 87-793, §1001(a)(2) "(g) (2d sentence)", 76 Stat. 863.

In subsection (a), the words "or its designee" are substituted for "or such officers or agents as the Commission may designate".

For repeal of the Act of Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended, see revision note for section 3104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-378 substituted "section 3104(c)" for "section 3104(a)(7) of this title".

1978—Subsec. (a). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 3326. Appointments of retired members of the armed forces to positions in the Department of Defense

(a) For the purpose of this section, "member" and "Secretary concerned" have the meanings given them by section 101 of title 37.

(b) A retired member of the armed forces may be appointed to a position in the civil service in or under the Department of Defense (including a nonappropriated fund instrumentality under the jurisdiction of the armed forces) during the period of 180 days immediately after his retirement only if—

(1) the proposed appointment is authorized by the Secretary concerned or his designee for the purpose, and, if the position is in the competitive service, after approval by the Office of Personnel Management;

(2) the minimum rate of basic pay for the position has been increased under section 5305 of this title; or

(3) a state of national emergency exists.

(c) A request by appropriate authority for the authorization, or the authorization and approval, as the case may be, required by subsection (b)(1) of this section shall be accompanied by a statement which shows the actions taken to assure that—

(1) full consideration, in accordance with placement and promotion procedures of the department concerned, was given to eligible career employees;

(2) when selection is by other than certification from an established civil service register, the vacancy has been publicized to give interested candidates an opportunity to apply;

(3) qualification requirements for the position have not been written in a manner designed to give advantage to the retired member; and

(4) the position has not been held open pending the retirement of the retired member.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 423; Pub. L. 96-54, §2(a)(14), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101-509, title V, §529 [title I, §101(b)(3)(A)], Nov. 5, 1990, 104 Stat. 1427, 1439.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 3101 (as applicable to 5 U.S.C. 3103).	Aug. 19, 1964, Pub. L. 88-448, §101 (as applicable to §204), 78 Stat. 484.
(b), (c)	5 U.S.C. 3103.	Aug. 19, 1964, Pub. L. 88-448, §204, 78 Stat. 487.

In subsection (a), the definition of "armed forces" is omitted as unnecessary in view of the definition in section 2101.

In subsection (b), the words "position in the civil service" are substituted for "civilian office" in view of the definition of "civil service" in section 2101. The words "(including a nonappropriated fund instrumen-

tality under the jurisdiction of the armed forces)" are added on authority of former section 3101(3).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Subsec. (b)(2). Pub. L. 101-509 substituted "5305" for "5303".

1979—Subsec. (b)(1). Pub. L. 96-54 substituted "Office of Personnel Management" for "Civil Service Commission".

SUSPENSION OF SECTION

Pub. L. 101-510, div. A, title XII, §1206(f), Nov. 5, 1990, 104 Stat. 1661, provided that: "Section 3326 of title 5, United States Code, shall not be in effect for the period beginning on the date of the enactment of this Act [Nov. 5, 1990] and ending two years after such date."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

§ 3327. Civil service employment information

(a) The Office of Personnel Management shall provide that information concerning opportunities to participate in competitive examinations conducted by, or under authority delegated by, the Office of Personnel Management shall be made available to the employment offices of the United States Employment Service.

(b) Subject to such regulations as the Office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of—

(1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service, and

(2) the period during which applications will be accepted.

As used in this subsection, "agency" means an agency as defined in section 5102(a)(1) of this title other than an agency all the positions in which are excepted by statute from the competitive service.

(Added Pub. L. 95-454, title III, §309(a), Oct. 13, 1978, 92 Stat. 1151.)

PRIOR PROVISIONS

A prior section 3327, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424, which prescribed standards for determination of qualifications of postmasters, including experience in postal field service, seniority, length of service, level of difficulty and responsibility of work, attendance, awards and commendations, and performance rating, was repealed by Pub. L. 91-375, §6(c)(7)(A), Aug. 12, 1970, 84 Stat. 776. See section 1001 of Title 39, Postal Service.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3330 of this title.

§ 3328. Selective Service registration

(a) An individual—

(1) who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453); and

(2) who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual,

shall be ineligible for appointment to a position in an Executive agency.

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful. Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the Executive agency making the appointment for which the eligibility is determined.

(Added Pub. L. 99-145, title XVI, §1622(a)(1), Nov. 8, 1985, 99 Stat. 777; amended Pub. L. 100-180, div. A, title XII, §1249, Dec. 4, 1987, 101 Stat. 1167.)

AMENDMENTS

1987—Subsec. (b). Pub. L. 100-180 struck out "within the Office" after "for the adjudication" in second sentence and inserted at end "Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the Executive agency making the appointment for which the eligibility is determined."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 7403.

§ 3329. Appointments of military reserve technicians to positions in the competitive service

(a) For the purpose of this section, the term "military reserve technician" has the meaning given such term by section 8401(30).

(b) The Secretary of Defense shall take such steps as may be necessary to ensure that, except as provided in subsection (d), any military reserve technician who is involuntarily separated from technician service, after completing at least 15 years of such service and 20 years of service creditable under section 1332¹ of title 10, by reason of ceasing to satisfy the condition described in section 8401(30)(B) shall, if appropriate written application is submitted within 1 year after the date of separation, be offered a position described in subsection (c) not later than 6 months after the date of the application.

(c) The position to be offered shall be a position—

(1) in the competitive service;

(2) within the Department of Defense;

(3) for which the individual is qualified; and

(4) the rate of basic pay for which is not less than the rate last received for technician service before separation.

¹ See References in Text note below.

AMENDMENTS

(d) This section shall not apply in the case of—

- (1) an involuntary separation for cause on charges of misconduct or delinquency; or
- (2) a technician who, as of the date of application under this section, is eligible for immediate (including for disability) or early retirement under subchapter III of chapter 83 or under chapter 84.

(e) The Secretary of Defense shall, in consultation with the Director of the Office of Personnel Management, prescribe such regulations as may be necessary to carry out this section.

(Added Pub. L. 102-484, div. A, title V, §544(a), Oct. 23, 1992, 106 Stat. 2415.)

REFERENCES IN TEXT

Section 1332 of title 10, referred to in subsec. (b), was renumbered section 12732 of Title 10, Armed Forces, by Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998.

CODIFICATION

Another section 3329 was renumbered section 3330 of this title.

§ 3330. Government-wide list of vacant positions

(a) For the purpose of this section, the term “agency” means an Executive agency, excluding the General Accounting Office and any agency (or unit thereof) whose principal function is the conduct of foreign intelligence or counter-intelligence activities, as determined by the President.

(b) The Office of Personnel Management shall establish and keep current a comprehensive list of all announcements of vacant positions in the competitive service within each agency that are to be filled by appointment for more than one year and for which applications are being (or will soon be) accepted from outside the agency’s work force.

(c) Included for any position listed shall be—

- (1) a brief description of the position, including its title, tenure, location, and rate of pay;
- (2) application procedures, including the period within which applications may be submitted and procedures for obtaining additional information; and
- (3) any other information which the Office considers appropriate.

(d) The list shall be available to members of the public.

(e) The Office shall prescribe such regulations as may be necessary to carry out this section. Any requirement under this section that agencies notify the Office as to the availability of any vacant positions shall be designed so as to avoid any duplication of information otherwise required to be furnished under section 3327 of this title or any other provision of law.

(f) The Office may, to the extent it determines appropriate, charge such fees to agencies for services provided under this section and for related Federal employment information. The Office shall retain such fees to pay the costs of providing such services and information.

(Added Pub. L. 102-484, div. D, title XLIV, §4431(a), Oct. 23, 1992, 106 Stat. 2719, §3329; renumbered §3330 and amended Pub. L. 104-52, title IV, §4(1), Nov. 19, 1995, 109 Stat. 490.)

1995—Pub. L. 104-52, §4(1)(A), renumbered section 3329 of this title, relating to government-wide list of vacant positions, as this section.

Subsec. (f). Pub. L. 104-52, §4(1)(B), added subsec. (f).

SUBCHAPTER II—OATH OF OFFICE

§ 3331. Oath of office

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.” This section does not affect other oaths required by law.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 16.	R.S. §1757. May 13, 1884, ch. 46, §§2, 3, 23 Stat. 22.

All but the quoted language in R.S. §1757 is omitted as obsolete since R.S. §1757 was originally an alternative oath to the oath prescribed in R.S. §1756 which oath was repealed by the Act of May 13, 1884, ch. 46, §2, 23 Stat. 22. The words “An individual, except the President, . . . in the civil service or uniformed services” are substituted for “any person . . . either in the civil, military, or naval service, except the President of the United States”. The second sentence of former section 16 is changed to read, “This section does not affect other oaths required by law.”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2903, 2904, 2905, 2906, 3332 of this title; title 2 section 64-1; title 10 sections 578, 603, 626, 12201, 14309; title 14 sections 273, 735; title 22 section 2504; title 33 section 854a-2; title 42 sections 1971, 4954.

§ 3332. Officer affidavit; no consideration paid for appointment

An officer, within 30 days after the effective date of his appointment, shall file with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing the appointment.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 21a.	Dec. 11, 1926, ch. 4, §1, 44 Stat. 918. Mar. 2, 1927, ch. 284, 44 Stat. 1346. Sept. 23, 1950, ch. 1010, §10, 64 Stat. 987.

The section is restated for clarity and conciseness. The term “officer” is coextensive with and substituted for “Each individual appointed hereafter as a civil officer of the United States by the President, by and with the advice and consent of the Senate, or by the President alone, or by a court of law, or by the head of a department” in view of the definition of “officer” in section 2104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Withholding of pay from officer until affidavit required under this section is filed, see section 5507 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5507 of this title; title 22 section 4001; title 42 section 211.

§ 3333. Employee affidavit; loyalty and striking against the Government

(a) Except as provided by subsection (b) of this section, an individual who accepts office or employment in the Government of the United States or in the government of the District of Columbia shall execute an affidavit within 60 days after accepting the office or employment that his acceptance and holding of the office or employment does not or will not violate section 7311 of this title. The affidavit is prima facie evidence that the acceptance and holding of office or employment by the affiant does not or will not violate section 7311 of this title.

(b) An affidavit is not required from an individual employed by the Government of the United States or the government of the District of Columbia for less than 60 days for sudden emergency work involving the loss of human life or the destruction of property. This subsection does not relieve an individual from liability for violation of section 7311 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 118q.	Aug. 9, 1955, ch. 690, §2, 69 Stat. 624.
.....	[Uncodified].	June 29, 1956, ch. 479, §3 (as applicable to the Act of Aug. 9, 1955, ch. 690, §2, 69 Stat. 624), 70 Stat. 453.

The section is restated for clarity and to conform to the style of section 3332.

In subsection (a), the words “after August 9, 1955” are omitted as executed. The words “if the affidavit is executed prior to acceptance of such office or employment” are omitted as unnecessary. The words “From and after July 1, 1956”, appearing in the Act of June 29, 1956, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 4001; title 39 section 410.

SUBCHAPTER III—DETAILS

ANNUAL REPORT TO CONGRESS ON EMPLOYEES OR MEMBERS OF ARMED SERVICES DETAILED TO EXECUTIVE AGENCIES; EXEMPTIONS

Provisions directing that each Executive agency detailing personnel submit an annual report to Senate and House Committees on Appropriations on all employees or members of armed services detailed to Executive agencies, listing grade, position, and offices of each person detailed and agency to which each such person was detailed, with exemptions for certain intelligence agencies, were contained in the following appropriations acts:

Pub. L. 103-329, title VI, §619, Sept. 30, 1993, 108 Stat. 2420.

Pub. L. 103-123, title VI, §617, Oct. 28, 1993, 107 Stat. 1263.

Pub. L. 102-393, title VI, §619, Oct. 6, 1992, 106 Stat. 1769; repealed by Pub. L. 104-66, title III, §3001(h), Dec. 21, 1995, 109 Stat. 734.

Pub. L. 102-141, title VI, §619, Oct. 28, 1991, 105 Stat. 871.

Pub. L. 101-509, title VI, §616, Nov. 5, 1990, 104 Stat. 1474.

Pub. L. 101-136, title VI, §616, Nov. 3, 1989, 103 Stat. 819.

Pub. L. 100-440, title VI, §616, Sept. 22, 1988, 102 Stat. 1754.

Pub. L. 100-202, §101(m) [title VI, §621], Dec. 22, 1987, 101 Stat. 1329-390, 1329-427.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 section 6635.

§ 3341. Details; within Executive or military departments

(a) The head of an Executive department or military department may detail employees among the bureaus and offices of his department, except employees who are required by law to be exclusively engaged on some specific work.

(b) Details under subsection (a) of this section may be made only by written order of the head of the department, and may be for not more than 120 days. These details may be renewed by written order of the head of the department, in each particular case, for periods not exceeding 120 days.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 38.	R.S. §166. May 28, 1896, ch. 252, §3, 29 Stat. 179.

The words “Executive department” are substituted for “department” as the definition of “department” applicable to this section is coextensive with the definition of “Executive department” in section 101.

The words “or military department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the

Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

The word "detail" is coextensive with and is substituted for "alter the distribution". The word "clerks" is omitted as included in "employees". The words "as he may find it necessary and proper to do" and "from time to time" are omitted as surplusage.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides "Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense" is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

TRANSFER OF APPROPRIATED FUNDS; FUNDING OF DETAILED EMPLOYEES

For restriction on availability of funds for salaries of employees reassigned on temporary detail basis to another position without independent approval by head of employing department or agency, see section 515(3) of Pub. L. 103-333, set out as a note under section 1301 of Title 31, Money and Finance.

CROSS REFERENCES

Internal Revenue field personnel detailed to duty in District of Columbia, see section 7803 of Title 26, Internal Revenue Code.

Railroad Retirement Board employees, see section 362 of Title 45, Railroads.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 652; title 42 section 5667g-2.

[§ 3342. Repealed. Pub. L. 102-378, § 2(13)(A), Oct. 2, 1992, 106 Stat. 1347]

Section, added Pub. L. 101-416, §2(a)(1), Oct. 12, 1990, 104 Stat. 902, related to Federal participants in executive exchange programs.

A prior section 3342, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425, which prohibited details of employees from field service to Executive department in District of Columbia except for temporary duty, details specifically provided for by law, or detailing of one employee from Bureau of Customs for duty in District of Columbia, was repealed by Pub. L. 89-762, §1(a), Nov. 5, 1966, 80 Stat. 1312.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1991, see section 9(b)(3) of Pub. L. 102-378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.

§ 3343. Details; to international organizations

(a) For the purpose of this section—

(1) "agency", "employee", and "international organization" have the meanings given them by section 3581 of this title; and

(2) "detail" means the assignment or loan of an employee to an international organization without a change of position from the agency by which he is employed to an international organization.

(b) The head of an agency may detail, for a period of not more than 5 years, an employee of his

agency to an international organization which requests services, except that under special circumstances, where the President determines it to be in the national interest, he may extend the 5-year period for up to an additional 3 years.

(c) An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. The authorization and payment of these allowances and other benefits from appropriations available therefor is deemed to comply with section 5536 of this title.

(d) Details may be made under subsection (b) of this section—

(1) without reimbursement to the United States by the international organization; or

(2) with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed.

(e) An employee detailed under subsection (b) of this section may be paid or reimbursed by an international organization for allowances or expenses incurred in the performance of duties required by the detail, without regard to section 209 of title 18.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 91-175, pt. V, §502(a), Dec. 30, 1969, 83 Stat. 825.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 2331.	Aug. 28, 1958, Pub. L. 85-795, §2, 72 Stat. 959.
(b)-(e)	5 U.S.C. 2332.	Aug. 28, 1958, Pub. L. 85-795, §3, 72 Stat. 959.

In subsection (a)(2), the words "without a change of position from the agency by which he is employed to an international organization" are substituted for "without the employee's transfer from the Federal agency by which he is employed" to eliminate the necessity of carrying into this section the definition of "transfer" appearing in former section 2331(5).

In subsection (e), the words "section 209 of title 18" are substituted for "section 1914 of title 18" on authority of the Act of Oct. 23, 1962, Pub. L. 87-849, §2, 76 Stat. 1126.

Other definitions appearing in former section 2331 are omitted from this section as inappropriate but are carried into section 3581.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-175 substituted "5" for "3" and inserted provision enabling President, regarding an agency employee detailed to an international organization for 5 years, to extend the 5-year period for up to an additional 3 years.

DETAILS TO INTERNATIONAL ORGANIZATIONS

For provisions concerning the providing for details of Federal employees to international organizations and the delegation of Presidential authority, concerning the extension of a detail under this section, to the Sec-

retary of State, see Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out as a note under section 3584 of this title.

CROSS REFERENCES

Authority of President to prescribe regulations necessary to carry out this section, see section 3584 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3582, 3584 of this title; title 26 section 3121; title 42 section 410.

§ 3344. Details; administrative law judges

An agency as defined by section 551 of this title which occasionally or temporarily is insufficiently staffed with administrative law judges appointed under section 3105 of this title may use administrative law judges selected by the Office of Personnel Management from and with the consent of other agencies.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 95-251, § 2(a)(1), (b)(2), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1010 (4th sentence).	June 11, 1946, ch. 324, § 11 (4th sentence), 60 Stat. 244.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

Pub. L. 95-251 substituted references to administrative law judges for references to hearing examiners in section catchline and wherever appearing in text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

CROSS REFERENCES

Additional requirements imposed by statute or otherwise recognized by law not limited or repealed by this section, see section 559 of this title.

Office of Personnel Management, investigations, reports, and regulations for purposes of this section as relating to administrative law judges, see section 1305 of this title.

Subsequent statutes to be held to supersede or modify this section only to the extent that they do so expressly, see section 559 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 559, 1305 of this title; title 15 section 1715; title 29 section 661; title 30 section 823; title 31 section 3801; title 42 sections 2000e-4, 3608, 3787.

§ 3345. Details; to office of head of Executive agency or military department

When the head of an Executive agency (other than the General Accounting Office) or military department dies, resigns, or is sick or absent, his first assistant, unless otherwise directed by the President under section 3347 of this title,

shall perform the duties of the office until a successor is appointed or the absence or sickness stops.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 100-398, § 7(a)(1), (2), Aug. 17, 1988, 102 Stat. 988.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 4.	R.S. § 177.

The words “Executive department” are substituted for “department” as the definition of “department” applicable to this section is coextensive with the definition of “Executive department” in section 101.

The words “or military department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides “Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense” is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Pub. L. 100-398 inserted “agency” after “Executive” in section catchline and substituted “Executive agency (other than the General Accounting Office)” for “Executive department” in text.

CROSS REFERENCES

Additional pay prohibited for officer performing duties of vacant office as authorized by this section, see section 5535 of this title.

Applicability to Deputy Secretary of Agriculture, see section 2211 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3347, 3348, 3349, 5535 of this title; title 7 section 2211; title 28 section 508.

§ 3346. Details; to subordinate offices

When an officer of a bureau of an Executive department or military department, whose appointment is not vested in the head of the department, dies, resigns, or is sick or absent, his first assistant, unless otherwise directed by the President under section 3347 of this title, shall perform the duties of the office until a successor is appointed or the absence or sickness stops.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 5.	R.S. §178.

The words “his first assistant” are substituted for “the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such bureau”. A chief of a bureau is an officer within the meaning of this section. The words “Executive department” are substituted for “department” as the definition of “department” applicable to this section is coextensive with the definition of “Executive department” in section 101.

The words “or military department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Additional pay prohibited for officer performing duties of vacant office as authorized by this section, see section 5535 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3347, 3348, 3349, 5535 of this title.

§ 3347. Details; Presidential authority

Instead of a detail under section 3345 or 3346 of this title, the President may direct the head of another Executive department or military department or another officer of an Executive department or military department, whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the office until a successor is appointed or the absence or sickness stops. This section does not apply to a vacancy in the office of Attorney General.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 6.	R.S. §179.

The words “in his discretion”, “vacant”, and “incumbent” are omitted as surplusage. The words “Executive department” are substituted for “department” as the definition of “department” applicable to this section is coextensive with the definition of “Executive department” in section 101. As used, the word “an” is coextensive with and substituted for “either”.

The words “or military department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air

Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EXECUTIVE ORDER NO. 9967

Ex. Ord. No. 9967, June 12, 1948, 13 F.R. 3249, which related to the designation of officers of the Department of Agriculture to act as Secretary of Agriculture, was superseded by Ex. Ord. No. 10481, Aug. 15, 1953, 18 F.R. 4944, formerly set out below.

EXECUTIVE ORDER NO. 10148

Ex. Ord. No. 10148, Aug. 5, 1950, 15 F.R. 5067, which related to the designation of officers of the Department of Commerce to act as Secretary of Commerce, was superseded by Ex. Ord. 11388, Jan. 15, 1968, 33 F.R. 563, formerly set out below.

EXECUTIVE ORDER NO. 10481

Ex. Ord. No. 10481, Aug. 15, 1953, 18 F.R. 4944, which provided for the designation of certain officers of the Department of Agriculture to act as Secretary of Agriculture, was revoked by Ex. Ord. No. 11793, July 10, 1974, 39 F.R. 25631, formerly set out below.

EX. ORD. NO. 10513. DESIGNATION OF OFFICERS TO ACT AS SECRETARY OF LABOR

Ex. Ord. No. 10513, Jan. 19, 1954, 19 F.R. 369, provided: I hereby authorize and direct the Assistant Secretaries of Labor and the Solicitor of Labor, in the order designated as hereinafter provided, to perform the duties of the office of the Secretary of Labor in case of the absence, sickness, resignation, or death of both the Secretary of Labor and the Under [Deputy] Secretary of Labor.

The Assistant Secretaries of Labor and the Solicitor of Labor shall act as Secretary of Labor as herein provided (1) in such order as the Secretary of Labor (or the Under [Deputy] Secretary when acting as Secretary) may by order designate from time to time, or (2) if no such designation order is in effect at the time, in the order of the respective dates of their commissions, or in the event that two or more of their commissions bear the same date, in the order in which they shall have taken their oath of office.

This order supersedes Executive Order No. 9968 of June 17, 1948, entitled “Designation of Certain Officers To Act as Secretary of Labor.”

EXECUTIVE ORDER NO. 10753

Ex. Ord. No. 10753, Feb. 15, 1958, 23 F.R. 1107, which related to the designation of officers of the Department of the Interior to act as Secretary of the Interior, was superseded by Ex. Ord. No. 11487, Oct. 6, 1969, 34 F.R. 15593, set out below.

EXECUTIVE ORDER NO. 10820

Ex. Ord. No. 10820, May 18, 1959, 24 F.R. 4045, which related to the order of succession to positions in the Department of Defense, was revoked by Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, formerly set out below.

EXECUTIVE ORDER NO. 10839

Ex. Ord. No. 10839, Sept. 30, 1959, 24 F.R. 7939, which provided for the order of succession in the Department of State, was revoked by Ex. Ord. No. 12343, Jan. 27, 1982, 47 F.R. 4225, set out below.

EXECUTIVE ORDER No. 10941

Ex. Ord. No. 10941, May 16, 1961, 26 F.R. 4277, which provided for the order of succession in the Treasury Department, was revoked by Ex. Ord. No. 11680, Aug. 21, 1972, 37 F.R. 16907, formerly set out below.

EX. ORD. NO. 11274. ORDER OF SUCCESSION—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ex. Ord. No. 11274, Mar. 30, 1966, 31 F.R. 5243, as amended by Pub. L. 101-509, title V, § 529 [title I, § 112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454, provided:

By virtue of the authority vested in me by Section 179 of the Revised Statutes (5 U.S.C. 6) [now this section] and Section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

1. In the event of a vacancy in the Office of the Secretary of Housing and Urban Development or during the absence or disability of the Secretary, the Deputy Secretary shall act as Secretary of Housing and Urban Development.

2. During any period when, by reason of absence, disability, or vacancy in office, neither the Secretary nor the Deputy Secretary is available to exercise the powers or perform the duties of the Office of the Secretary, an Assistant Secretary or the General Counsel, in such order as the Secretary may from time to time prescribe, shall act as Secretary of Housing and Urban Development. If no such order of succession is in effect at that time, then they shall act in the order in which they shall have taken office as Assistant Secretaries or General Counsel.

EXECUTIVE ORDER No. 11313

Ex. Ord. No. 11313, Oct. 15, 1966, 31 F.R. 13417, provided for performance of duties of Postmaster General by certain officers of former Post Office Department. See 39 CFR § 222.1.

EXECUTIVE ORDER No. 11388

Ex. Ord. No. 11388, Jan. 15, 1968, 33 F.R. 563, which related to the designation of officers of the Department of Commerce to act as Secretary of Commerce, was superseded by Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, set out below.

EX. ORD. NO. 11487. DESIGNATION OF OFFICERS OF THE DEPARTMENT OF THE INTERIOR TO ACT AS SECRETARY OF THE INTERIOR

Ex. Ord. No. 11487, Oct. 6, 1969, 34 F.R. 15593, as amended by Pub. L. 101-509, title V, § 529 [title I, § 112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454, provided:

By virtue of the authority vested in me by section 3347 of title 5 of the United States Code [this section] and section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. During any period when by reason of absence, disability, or vacancy in office, neither the Secretary of the Interior nor the Deputy Secretary of the Interior is available to exercise the powers or perform the duties of the office of Secretary, an Assistant Secretary of the Interior or the Solicitor of the Department of the Interior, in such order as the Secretary of the Interior may from time to time prescribe, shall act as Secretary. If no such order of succession is in effect at that time, they shall act as Secretary in the order in which they shall have taken office as Assistant Secretaries or Solicitor.

SEC. 2. This order supersedes Executive Order No. 10753 of February 15, 1958, entitled "Designation of certain officers of the Department of the Interior to act as Secretary of the Interior."

EXECUTIVE ORDER No. 11680

Ex. Ord. No. 11680, Aug. 21, 1972, 37 F.R. 16907, which provided for order of succession in Treasury Department, was revoked by Ex. Ord. No. 11822, Dec. 10, 1974, 39 F.R. 43275, set out below.

EXECUTIVE ORDER No. 11793

Ex. Ord. No. 11793, July 10, 1974, 39 F.R. 25631, which provided for designation of certain officers of Agriculture Department to act as Secretary of Agriculture, was revoked by Ex. Ord. No. 11957, Jan. 13, 1977, 42 F.R. 3295, set out below.

EX. ORD. NO. 11822. DESIGNATION OF OFFICERS OF THE DEPARTMENT OF THE TREASURY TO ACT AS SECRETARY OF THE TREASURY

Ex. Ord. No. 11822, Dec. 10, 1974, 39 F.R. 43275, provided:

By virtue of the authority vested in me by section 3347 of title 5 [this section] and section 301 of title 3 of the United States Code and as President of the United States, it is ordered as follows:

SECTION 1. During any period when, by reason of absence, disability, or vacancy in office, either the Secretary of the Treasury or his Deputy Secretary is not available to exercise the powers or perform the duties of the office of Secretary, an officer from the Department of the Treasury appointed by the President—by and with the advice and consent of the Senate, in such order as the Secretary of the Treasury may from time to time prescribe—shall act as Secretary until the absence or the disability of the incumbent shall cease, or until a successor is appointed. If no such order of succession is in effect at that time, then such officers shall act as Secretary in the descending order of rank, as established by their offices being listed in sections 5314, 5315 or 5316 of title 5 of the United States Code and, at each level of the Executive Schedule, in the order in which they shall have taken the oath as such officers.

SEC. 2. Executive Order No. 11680 of August 21, 1972, entitled "Designation of Certain Officers to Act as Secretary of the Treasury" is hereby revoked.

GERALD R. FORD.

EX. ORD. NO. 11880. DESIGNATION OF OFFICERS OF THE DEPARTMENT OF COMMERCE TO ACT AS SECRETARY OF COMMERCE

Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 3347 of Title 5 of the United States Code and section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. During any period when, by reason of absence, disability or vacancy in office, both the Secretary of Commerce and the Deputy Secretary of Commerce are not available to exercise the powers or perform the duties of the Office of Secretary, an Assistant Secretary of Commerce, the General Counsel of the Department of Commerce, or an officer of the Department of Commerce appointed by the President with the advice and consent of the Senate in such order as the Secretary of Commerce may from time to time prescribe, shall act as Secretary. If no such order of succession is in effect at that time, an Assistant Secretary or the General Counsel shall act as Secretary in the order in which they shall have taken office as Assistant Secretaries or General Counsel.

SEC. 2. This Order supersedes Executive Order No. 11388 of January 15, 1968.

EX. ORD. NO. 11957. DESIGNATION OF CERTAIN OFFICERS OF THE DEPARTMENT OF AGRICULTURE TO ACT AS SECRETARY OF AGRICULTURE.

Ex. Ord. No. 11957, Jan. 13, 1977, 42 F.R. 3295, provided: By virtue of the authority vested in me by Section 3347 of Title 5 [this section] and section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. During any period when, by reason of absence, disability, or vacancy in office, both the Secretary of Agriculture and the Deputy Secretary of Ag-

riculture are not available to exercise the powers or perform the duties of the Office of Secretary, the officers from the Department of Agriculture whose appointments are vested in the President, by and with the advice and consent of the Senate, shall act as Secretary in such order as the Secretary of Agriculture may from time to time prescribe. If no such order of succession is in effect at that time, then such officers shall act as Secretary in the descending order of rank, as established by the listing of their offices in Sections 5314, 5315 or 5316 of Title 5 of the United States Code and, at each level of the Executive Schedule, in the order in which they shall have taken oath as such officers.

SEC. 2. Executive Order No. 11793 of July 10, 1974, is hereby revoked.

GERALD R. FORD.

EX. ORD. NO. 12343. DESIGNATION OF CERTAIN OFFICERS
TO ACT AS SECRETARY OF STATE

Ex. Ord. No. 12343, Jan. 27, 1982, 47 F.R. 4225, provided: By the authority vested in me as President of the United States of America by Section 3347 of Title 5 and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. During any period when, by reason of absence, disability, or vacancy in office, neither the Secretary of State nor the Deputy Secretary of State, is available to exercise the powers or perform the duties of the Office of the Secretary, an officer from the Department of State who has been appointed by the President, by and with the advice and consent of the Senate, in such order as the Secretary of State may from time to time prescribe, shall act as Secretary. If no such order of succession is in effect at that time, then such officers shall act as Secretary in descending order of rank, as established by the listing of their offices in Sections 5314 or 5315 of Title 5 of the United States Code, and at each level of the Executive Schedule in the order in which they shall have taken the oath as such officers.

SEC. 2. The President may at any time, pursuant to law but without regard to the foregoing provisions of this Order, direct that an officer specified by the President shall act as Secretary of State.

SEC. 3. Executive Order No. 10839 is revoked.

RONALD REAGAN.

EXECUTIVE ORDER NO. 12514

Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, which provided for order of succession of officers to act as Secretary of Defense, Secretary of the Army, Secretary of the Navy, and Secretary of the Air Force, was revoked by Ex. Ord. No. 12787, Dec. 31, 1991, 57 F.R. 517, set out below.

EX. ORD. NO. 12787. ORDER OF SUCCESSION OF OFFICERS
TO ACT AS SECRETARY OF DEFENSE

Ex. Ord. No. 12787, Dec. 31, 1991, 57 F.R. 517, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Succession to the Authority of the Secretary of Defense.*

(a) In the event of the death, permanent disability, or resignation of the Secretary of Defense, the incumbents holding the Department of Defense positions designated below shall, in the order indicated, act for and exercise the powers of the Secretary of Defense:

- (1) Deputy Secretary of Defense.
- (2) Secretary of the Army.
- (3) Secretary of the Navy.
- (4) Secretary of the Air Force.
- (5) Under Secretary of Defense for Acquisition [now Under Secretary of Defense for Acquisition and Technology].
- (6) Under Secretary of Defense for Policy.
- (7) Deputy Under Secretary of Defense for Acquisition [now Under Secretary of Defense for Acquisition and Technology].

(8) Director of Defense Research and Engineering, Assistant Secretaries of Defense, the Comptroller of the Department of Defense [now Under Secretary of Defense (Comptroller)], the Director of Operational Test and Evaluation, the Deputy Under Secretary of Defense for Policy, and the General Counsel of the Department of Defense, in the order fixed by their length of service as permanent appointees in such positions.

(9) Under Secretaries of the Army, the Navy, and the Air Force, in the order fixed by their length of service as permanent appointees in such positions.

(10) Assistant Secretaries and General Counsels of the Army, the Navy, and the Air Force, in the order fixed by their length of service as permanent appointees in such positions.

(b) In the event of the temporary absence or temporary disability of the Secretary of Defense, the incumbents holding the Department of Defense positions designated in paragraph (a) of this section shall, in the order indicated, act for and exercise the powers of the Secretary of Defense.

(1) In these instances, the designation of an Acting Secretary of Defense applies only for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of his office upon his return.

(2) In the event that the Secretary of Defense is merely absent from his position, the Secretary may continue to exercise the powers and fulfill the duties of his office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of Defense at the time that such appointments are made.

(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of Defense under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SEC. 2. *Temporary Nature of Succession.*

Succession to act for and exercise the powers of the Secretary of Defense pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

SEC. 3. *Revocation of Prior Executive Order.*

Executive Order No. 12514 of May 14, 1985, is hereby revoked.

GEORGE BUSH.

EX. ORD. NO. 12879. ORDER OF SUCCESSION OF OFFICERS
TO ACT AS SECRETARY OF THE NAVY

Ex. Ord. No. 12879, Nov. 8, 1993, 58 F.R. 59929, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Succession to the Authority of the Secretary of the Navy.*

(a) In the event of the death, permanent disability, or resignation of the Secretary of the Navy, the incumbents holding the positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of the Navy:

- (1) The Under Secretary of the Navy.
- (2) The Assistant Secretaries and General Counsel of the Navy, in the order fixed by their length of services as permanent appointees in such positions.
- (3) The Chief of Naval Operations.
- (4) The Commandant of the Marine Corps.

(b) In the event of the temporary absence or temporary disability of the Secretary of the Navy, the incumbents holding the Department of the Navy positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of the Navy.

(1) In these instances, the designation of an Acting Secretary of the Navy applies only for the duration of

the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of his office upon his return.

(2) In the event that the Secretary of the Navy is merely absent from this position, the Secretary of the Navy may continue to exercise the powers and fulfill the duties of his office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of the Navy at the time that such appointments are made.

(d) Notwithstanding paragraph (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of the Navy under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SEC. 2. Temporary Nature of Succession. Succession to act for and exercise the powers of the Secretary of the Navy pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

WILLIAM J. CLINTON.

EX. ORD. NO. 12908. ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF THE ARMY

Ex. Ord. No. 12908, Apr. 22, 1994, 59 F.R. 21907, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Succession To Act as the Secretary of the Army.

(a) In the event of the death, permanent disability, or resignation of the Secretary of the Army, the incumbents holding the positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of the Army:

(1) The Under Secretary of the Army.

(2) The Assistant Secretaries and General Counsel of the Army, in the order fixed by their length of service as permanent appointees in such positions.

(3) The Chief of Staff of the Army.

(b) In the event of the absence or temporary disability of the Secretary of the Army, the incumbents holding the Department of the Army positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of the Army.

(1) The designation of an Acting Secretary of the Army under this subsection applies only for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of the Secretary's office.

(2) When the Secretary of the Army is temporarily absent from the position, the Secretary of the Army may continue to exercise the powers and fulfill the duties of his office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of the Army at the time that such appointments are made.

(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of the Army under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SEC. 2. Temporary Nature of Succession. Succession to act for and exercise the powers of the Secretary of the Army pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

WILLIAM J. CLINTON.

EX. ORD. NO. 12909. ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF THE AIR FORCE

Ex. Ord. No. 12909, Apr. 22, 1994, 59 F.R. 21909, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Succession To Act as the Secretary of the Air Force.

(a) In the event of the death, permanent disability, or resignation of the Secretary of the Air Force, the incumbents holding the positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of the Air Force:

(1) The Under Secretary of the Air Force.

(2) The Assistant Secretaries and General Counsel of the Air Force, in the order fixed by their length of service as permanent appointees in such positions.

(3) The Chief of Staff of the Air Force.

(b) In the event of the absence or temporary disability of the Secretary of the Air Force, the incumbents holding the Department of the Air Force positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of the Air Force.

(1) The designation of an Acting Secretary of the Air Force applies only for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of the Secretary's office.

(2) In the event that the Secretary of the Air Force is temporarily absent from the position, the Secretary of the Air Force may continue to exercise the powers and fulfill the duties of his office during the absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of the Air Force at the time that such appointments are made.

(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of the Air Force under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SEC. 2. Temporary Nature of Succession. Succession to act for and exercise the powers of the Secretary of the Air Force pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

WILLIAM J. CLINTON.

CROSS REFERENCES

Additional pay prohibited for officer performing duties of vacant office as authorized by this section, see section 5535 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3345, 3346, 3348, 5535 of this title; title 10 sections 3017, 5017, 8017.

§ 3348. Details; limited in time

(a) A vacancy caused by death or resignation may be filled temporarily under section 3345, 3346, or 3347 of this title for not more than 120 days, except that—

(1) if a first or second nomination to fill such vacancy has been submitted to the Senate, the position may be filled temporarily under section 3345, 3346, or 3347 of this title—

(A) until the Senate confirms the nomination; or

(B) until 120 days after the date on which either the Senate rejects the nomination or the nomination is withdrawn; or

(2) if the vacancy occurs during an adjournment of the Congress sine die, the position may be filled temporarily until 120 days after

the Congress next convenes, subject thereafter to the provisions of paragraph (1) of this subsection.

(b) Any person filling a vacancy temporarily under section 3345, 3346, or 3347 of this title whose nomination to fill such vacancy has been submitted to the Senate may not serve after the end of the 120-day period referred to in paragraph (1)(B) or (2) of subsection (a) of this section, if the nomination of such person is rejected by the Senate or is withdrawn.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426; Pub. L. 100-398, §7(b), Aug. 17, 1988, 102 Stat. 988.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 7.	R.S. §180. Feb. 6, 1891, ch. 113, 26 Stat. 733.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Pub. L. 100-398 amended section generally. Prior to amendment, section read as follows: “A vacancy caused by death or resignation may be filled temporarily under section 3345, 3346, or 3347 of this title for not more than 30 days.”

§ 3349. Details; to fill vacancies; restrictions

A temporary appointment, designation, or assignment of one officer to perform the duties of another under section 3345 or 3346 of this title may not be made otherwise than as provided by those sections, except to fill a vacancy occurring during a recess of the Senate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 8.	R.S. §181.

The prohibition is restated in positive form. This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides “Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense” is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SUBCHAPTER IV—TRANSFERS

§ 3351. Preference eligibles; transfer; physical qualifications; waiver

In determining qualifications of a preference eligible for transfer to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

- (1) requirements as to age, height, and weight, unless the requirement is essential to

the performance of the duties of the position; and

- (2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426; Pub. L. 94-183, §2(4), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 854 (1st 2 sentences, so much as relates to transfer).	June 27, 1944, ch. 287, §5 (1st 2 sentences, so much as relates to transfer), 58 Stat. 388.

The section is restated to conform to section 3312. The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are added on authority of former sections 851, 858, and 869, which are carried into this title. The last sentence is added on authority of former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively. 1975—Pub. L. 94-183 struck out “, except an appointment made under section 3311 of title 39” after “or made with the advice and consent of, the Senate”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of preference eligible, see section 2108 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1438.

§ 3352. Preference in transfers for employees making certain disclosures

(a) Subject to the provisions of subsections (d) and (e), in filling a position within any Executive agency, the head of such agency may give preference to any employee of such agency, or any other Executive agency, to transfer to a position of the same status and tenure as the position of such employee on the date of applying for a transfer under subsection (b) if—

- (1) such employee is otherwise qualified for such position;
- (2) such employee is eligible for appointment to such position; and
- (3) the Merit Systems Protection Board makes a determination under the provisions of chapter 12 that a prohibited personnel action described under section 2302(b)(8) was taken against such employee.

(b) An employee who meets the conditions described under subsection (a)(1), (2), and (3) may voluntarily apply for a transfer to a position, as described in subsection (a), within the Executive agency employing such employee or any other Executive agency.

(c) If an employee applies for a transfer under the provisions of subsection (b) and the selecting official rejects such application, the selecting official shall provide the employee with a written notification of the reasons for the rejection within 30 days after receiving such application.

(d) An employee whose application for transfer is rejected under the provisions of subsection (c) may request the head of such agency to review the rejection. Such request for review shall be submitted to the head of the agency within 30 days after the employee receives notification under subsection (c). Within 30 days after receiving a request for review, the head of the agency shall complete the review and provide a written statement of findings to the employee and the Merit Systems Protection Board.

(e) The provisions of subsection (a) shall apply with regard to any employee—

- (1) for no more than 1 transfer;
- (2) for a transfer from or within the agency such employee is employed at the time of a determination by the Merit Systems Protection Board that a prohibited personnel action as described under section 2302(b)(8) was taken against such employee; and
- (3) no later than 18 months after such a determination is made by the Merit Systems Protection Board.

(f) Notwithstanding the provisions of subsection (a), no preference may be given to any employee applying for a transfer under subsection (b), with respect to a preference eligible (as defined under section 2108(3)) applying for the same position.

(Added Pub. L. 101-12, §5(a), Apr. 10, 1989, 103 Stat. 32.)

EFFECTIVE DATE

Section effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

SUBCHAPTER V—PROMOTION

§ 3361. Promotion; competitive service; examination

An individual may be promoted in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This section does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 638 (as applicable to promotion).	Jan. 16, 1883, ch. 27, § 7 (as applicable to promotion), 22 Stat. 406.

The words “That after the expiration of six months from the passage of this act” are omitted as executed.

The words “in the competitive service” are substituted for “in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules” because of the definition of “competitive service” in section 2102. In the second sentence, the words “the provisions of this title governing the competitive service” are substituted for “this act”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3362. Promotion; effect of incentive award

An agency, in qualifying and selecting an employee for promotion, shall give due weight to an incentive award under chapter 45 of this title. For the purpose of this section, “agency” and “employee” have the meanings given them by section 4501 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2123(f).	Sept. 1, 1954, ch. 1208, §304(f), 68 Stat. 1113.

The word “incentive” is added for clarification. The second sentence is added on authority of former section 2122, which is carried into section 4501.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3363. Preference eligibles; promotion; physical qualifications; waiver

In determining qualifications of a preference eligible for promotion to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

- (1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and
- (2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 427; Pub. L. 94-183, §2(5), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 854 (1st 2 sentences, so much as relates to promotion).	June 27, 1944, ch. 287, § 5 (1st 2 sentences, so much as relates to promotion), 58 Stat. 388.

The section is restated to conform to section 3312. The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are added on authority of former sections 851, 858, and

869, which are carried into this title. The last sentence is added on authority of former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

1975—Pub. L. 94-183 struck out “, except an appointment made under section 3311 of title 39” after “or made with the advice and consent of, the Senate”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1438.

[§ 3364. Repealed. Pub. L. 94-183, § 2(6), Dec. 31, 1975, 89 Stat. 1057]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 427, related to promotion to regular force of substitute employees in postal field service.

SUBCHAPTER VI—ASSIGNMENTS TO AND FROM STATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22 section 4081; title 41 section 419; title 42 section 11708.

§ 3371. Definitions

For the purpose of this subchapter—

(1) “State” means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality;

(2) “local government” means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1);

(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act;

(3) “Federal agency” means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the

Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

(4) “other organization” means—

(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

(B) an association of State or local public officials;

(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management; or

(D) a federally funded research and development center.

(Added Pub. L. 91-648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1920; amended Pub. L. 93-638, title I, § 104(a), formerly § 105(a), Jan. 4, 1975, 88 Stat. 2208, renumbered § 104(a), Pub. L. 100-472, title II, § 203(a), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 95-454, title VI, § 603(a), Oct. 13, 1978, 92 Stat. 1189; Pub. L. 100-472, title II, § 203(b), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 101-301, § 2(c), May 24, 1990, 104 Stat. 207; Pub. L. 103-337, div. A, title X, § 1068(a), Oct. 5, 1994, 108 Stat. 2852.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (2)(C), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 4 of the Indian Self-Determination and Education Assistance Act, referred to in par. (2)(C), is classified to section 450b of Title 25, Indians.

AMENDMENTS

1994—Par. (4)(D). Pub. L. 103-337 added subpar. (D).

1990—Par. (2)(C). Pub. L. 101-301 substituted “section 4” for “section 4(m)”.

1988—Par. (2)(C). Pub. L. 100-472, § 203(b), amended Pub. L. 93-638, by substituting “section 4(m)” for “section 4(c)” in the provision it added as par. (2)(C) of this section. See 1975 Amendment note below.

1978—Par. (1)(A). Pub. L. 95-454, § 603(a)(1), inserted reference to the Trust Territory of the Pacific Islands.

Pars. (3), (4). Pub. L. 95-454, § 603(a)(2), added pars. (3) and (4).

1975—Par. (2)(C). Pub. L. 93-638, as amended by Pub. L. 100-472, § 203(b), added par. (2)(C).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section 404 of title IV of Pub. L. 91-648 provided that: “This title [enacting this subchapter and repealing sections 1881 to 1888 of Title 7, Agriculture, section 869b of Title 20, Education, and section 246(f) of Title 42, The Public Health and Welfare, (less applicability to commissioned officers of the Public Health Service)] shall become effective sixty days after the date of enactment of this Act [Jan. 5, 1971].”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

DECLARATION OF PURPOSE

Section 401 of title IV of Pub. L. 91-648, as amended by Pub. L. 95-454, title VI, §602(b), Oct. 13, 1978, 92 Stat. 1189, provided that: "The purpose of this title [see Effective Date note above] is to provide for the temporary assignment of personnel between the Federal Government and State and local governments, institutions of higher education, and other organizations."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3372 of this title; title 22 sections 2122, 2124c.

§ 3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of—

(1) an employee of his agency, other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a State or local government; and

(2) an employee of a State or local government to his agency;

for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years. In the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this subchapter,¹ the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization. If the assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, the Secretary may assign the employee to complete the period of assignment and may execute an agreement with the tribal organization with respect to the replacement employee. That agreement may provide for a different period of assignment as may be agreed to by the Secretary and the tribal organization.

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of a Federal agency to an institution of higher education;

(2) an employee of an institution of higher education to a Federal agency;

(3) an employee of a Federal agency to any other organization; and

(4) an employee of an other organization to a Federal agency.

(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.

(d) Where the employee is assigned to a tribal organization, the employee shall be eligible for promotions, periodic step-increases, and additional step-increases, as defined in chapter 53 of this title, on the same basis as other Federal employees.

(e) Under regulations prescribed pursuant to section 3376 of this title—

(1) an assignment of an employee of a Federal agency to an other organization or an institution of higher education, and an employee so assigned, shall be treated in the same way as an assignment of an employee of a Federal agency to a State or local government, and an employee so assigned, is treated under the provisions of this subchapter governing an assignment of an employee of a Federal agency to a State or local government, except that the rate of pay of an employee assigned to a federally funded research and development center may not exceed the rate of pay that such employee would be paid for continued service in the position in the Federal agency from which assigned; and

(2) an assignment of an employee of an other organization or an institution of higher education to a Federal agency, and an employee so assigned, shall be treated in the same way as an assignment of an employee of a State or local government to a Federal agency, and an employee so assigned, is treated under the provisions of this subchapter governing an assignment of an employee of a State or local government to a Federal agency.

(Added Pub. L. 91-648, title IV, §402(a), Jan. 5, 1971, 84 Stat. 1921; amended Pub. L. 93-638, title I, §104(k), (l), as added Pub. L. 100-472, title II, §203(f), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 95-454, title VI, §603(b), (c), Oct. 13, 1978, 92 Stat. 1190; Pub. L. 98-146, title II, Nov. 4, 1983, 97 Stat. 946; Pub. L. 103-89, §3(b)(1)(A), Sept. 30, 1993, 107 Stat. 981; Pub. L. 103-337, div. A, title X, §1068(b), Oct. 5, 1994, 108 Stat. 2852.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103-337 added subsec. (e).

1993—Subsec. (d). Pub. L. 103-89 substituted "and additional step-increases, as defined in chapter 53" for "additional step-increases, merit pay, and cash awards, as defined in chapters 53 and 54".

1988—Subsecs. (a), (d). Pub. L. 100-472 added Pub. L. 93-638, §104(k), (l). See 1975 Amendment note below.

¹ So in original. Probably should be "this title."

1983—Subsec. (a). Pub. L. 98-146 inserted sentence providing that, in the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this title, the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization.

1978—Subsec. (a). Pub. L. 95-454, §603(b), (c)(1), substituted “a Federal” for “an executive” wherever appearing, and in cl. (1) inserted provisions relating to a noncareer appointee, limited term appointee, or limited emergency appointee, and an employee excepted from the competitive service.

Subsec. (b). Pub. L. 95-454, §603(b), (c)(2)–(4), in cls. (1) and (2) substituted “a Federal” for “an executive”, and added cls. (3) and (4).

Subsec. (c). Pub. L. 95-454, §603(c)(5), added subsec. (c).

1975—Subsec. (a). Pub. L. 93-638, §104(k), as added by Pub. L. 100-472, inserted at end “If the assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, the Secretary may assign the employee to complete the period of assignment and may execute an agreement with the tribal organization with respect to the replacement employee. That agreement may provide for a different period of assignment as may be agreed to by the Secretary and the tribal organization.”

Subsec. (d). Pub. L. 93-638, §104(l), as added by Pub. L. 100-472, added subsec. (d).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 3(c) of Pub. L. 103-89 provided that: “The amendments made by this section [amending this section and sections 4501, 4502, 5302, 5332, 5334 to 5336, 5361 to 5363, 5948, and 8473 of this title, sections 1602, 1732, and 1733 of Title 10, Armed Forces, and section 731 of Title 31, Money and Finance, repealing sections 4302a and 5401 to 5410 of this title, and amending provisions set out as a note under section 5304 of this title] shall take effect as of November 1, 1993.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 4501.

§ 3373. Assignment of employees to State or local governments

(a) An employee of a Federal agency assigned to a State or local government under this subchapter is deemed, during the assignment, to be either—

- (1) on detail to a regular work assignment in his agency; or
- (2) on leave without pay from his position in the agency.

An employee assigned either on detail or on leave without pay remains an employee of his agency. The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee so assigned. The supervision of the duties of an employee on detail may be governed by agreement between the Federal agency and the State or local government concerned.

(b) The assignment of an employee of a Federal agency either on detail or on leave without pay to a State or local government under this subchapter may be made with or without reimbursement by the State or local government for the travel and transportation expenses to or

from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Federal agency used for paying the travel and transportation expenses or pay.

(c) For any employee so assigned and on leave without pay—

(1) if the rate of pay for his employment by the State or local government is less than the rate of pay he would have received had he continued in his regular assignment in the agency, he is entitled to receive supplemental pay from the agency in an amount equal to the difference between the State or local government rate and the agency rate;

(2) he is entitled to annual and sick leave to the same extent as if he had continued in his regular assignment in the agency; and

(3) he is entitled, notwithstanding other statutes—

(A) to continuation of his insurance under chapter 87 of this title, and coverage under chapter 89 of this title or other applicable authority, so long as he pays currently into the Employee's Life Insurance Fund and the Employee's Health Benefits Fund or other applicable health benefits system (through his employing agency) the amount of the employee contributions;

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that would have been deducted from a like agency pay for the period of the assignment and payment by the Federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

(C) for the purpose of subchapter I of chapter 85 of this title, to credit the service performed during the period of his assignment under this subchapter as Federal service, and to consider his State or local government pay (and his supplemental pay, if any) as Federal wages. To the extent that the service could also be the basis for entitlement to unemployment compensation under a State law, the employee may elect to claim unemployment compensation on the basis of the service under either the State law or subchapter I of chapter 85 of this title.

However, an employee or his beneficiary may not receive benefits referred to in subparagraphs (A) and (B) of this paragraph (3), based on service during an assignment under this subchapter for which the employee or, if he dies without making such an election, his beneficiary elects to receive benefits, under any State or local government retirement or insurance law or program, which the Office of Personnel Manage-

ment determines to be similar. The Federal agency shall deposit currently in the Employee's Life Insurance Fund, the Employee's Health Benefits Fund or other applicable health benefits system, respectively, the amount of the Government's contributions on account of service with respect to which employee contributions are collected as provided in subparagraphs (A) and (B) of this paragraph (3).

(d)(1) An employee so assigned and on leave without pay who dies or suffers disability as a result of personal injury sustained while in the performance of his duty during an assignment under this subchapter shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(2) An employee who elects to receive benefits from a State or local government may not receive an annuity under subchapter III of chapter 83 of this title and benefits from the State or local government for injury or disability to himself covering the same period of time. This provision does not—

(A) bar the right of a claimant to the greater benefit conferred by either the State or local government or subchapter III of chapter 83 of this title for any part of the same period of time;

(B) deny to an employee an annuity accruing to him under subchapter III of chapter 83 of this title on account of service performed by him; or

(C) deny any concurrent benefit to him from the State or local government on account of the death of another individual.

(Added Pub. L. 91-648, title IV, §402(a), Jan. 5, 1971, 84 Stat. 1921; amended Pub. L. 95-454, title VI, §603(b), title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1190, 1224; Pub. L. 102-378, §2(14), Oct. 2, 1992, 106 Stat. 1347.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (a), is classified to sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1992—Pub. L. 102-378 substituted “or local” for “and local” in section catchline.

1978—Subsecs. (a), (b). Pub. L. 95-454, §603(b), substituted “a Federal” for “an executive” and “Federal agency” for “executive agency”.

Subsec. (c). Pub. L. 95-454, §§603(b), 906(a)(2), substituted “Federal agency” for “executive agency” wherever appearing, and “Office of Personnel Management” for “Civil Service Commission”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3396 of this title.

§ 3374. Assignments of employees from State or local governments

(a) An employee of a State or local government who is assigned to a Federal agency under an arrangement under this subchapter may—

(1) be appointed in the Federal agency without regard to the provisions of this title governing appointment in the competitive service for the agreed period of the assignment; or

(2) be deemed on detail to the Federal agency.

(b) An employee given an appointment is entitled to pay in accordance with chapter 51 and subchapter III of chapter 53 of this title or other applicable law, and is deemed an employee of the Federal agency for all purposes except—

(1) subchapter III of chapter 83 of this title or other applicable retirement system;

(2) chapter 87 of this title; and

(3) chapter 89 of this title or other applicable health benefits system unless his appointment results in the loss of coverage in a group health benefits plan the premium of which has been paid in whole or in part by a State or local government contribution.

The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.

(c) During the period of assignment, a State or local government employee on detail to a Federal agency—

(1) is not entitled to pay from the agency, except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;

(2) is deemed an employee of the agency for the purpose of chapter 73 of this title, sections 203, 205, 207, 208, 209, 602, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, sections 1343, 1344, and 1349(b) of title 31, and the Federal Tort Claims Act and any other Federal tort liability statute; and

(3) is subject to such regulations as the President may prescribe.

The supervision of the duties of such an employee may be governed by agreement between the Federal agency and the State or local government concerned. A detail of a State or local government employee to a Federal agency may be made with or without reimbursement by the Federal agency for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the State or local government, or a part thereof, to employee benefit systems.

(d) A State or local government employee who is given an appointment in a Federal agency for

the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(e) If a State or local government fails to continue the employer's contribution to State or local government retirement, life insurance, and health benefit plans for a State or local government employee who is given an appointment in a Federal agency, the employer's contributions covering the State or local government employee's period of assignment, or any part thereof, may be made from the appropriations of the Federal agency concerned.

(Added Pub. L. 91-648, title IV, §402(a), Jan. 5, 1971, 84 Stat. 1923; amended Pub. L. 95-454, title VI, §603(b), (d), Oct. 13, 1978, 92 Stat. 1190; Pub. L. 97-258, §3(a)(6), Sept. 13, 1982, 96 Stat. 1063.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (c)(2), is classified to sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1982—Subsec. (c)(2). Pub. L. 97-258 substituted “sections 1343, 1344, and 1349(b)” for “section 638a”.

1978—Subsec. (a). Pub. L. 95-454, §603(b), substituted “a Federal” for “an executive”, and “Federal agency” for “executive agency” in two places.

Subsec. (b). Pub. L. 95-454, §603(b), (d)(1), inserted provisions relating to nonapplicability of exceptions to non-Federal employees, and substituted “Federal” for “executive”.

Subsec. (c). Pub. L. 95-454, §603(b), (d)(2), (3), inserted provisions relating to pay received from the State or local government at less than the appropriate rate of pay, and provisions relating to contributions to employee benefit systems, and substituted “a Federal” for “an executive” and “Federal agency” for “executive agency” wherever appearing.

Subsec. (d). Pub. L. 95-454, §603(b), substituted “a Federal” for “an executive” in two places.

Subsec. (e). Pub. L. 95-454, §603(b), substituted “a Federal” for “an executive” and “Federal” for “executive”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 section 878; title 25 section 2804.

§ 3375. Travel expenses

(a) Appropriations of a Federal agency are available to pay, or reimburse, a Federal or

State or local government employee in accordance with—

(1) subchapter I of chapter 57 of this title, for the expenses of—

(A) travel, including a per diem allowance, to and from the assignment location;

(B) a per diem allowance at the assignment location during the period of the assignment; and

(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the Federal agency considers the travel in the interest of the United States;

(2) section 5724 of this title, for the expenses of transportation of his immediate family and of his household goods and personal effects to and from the assignment location;

(3) section 5724a(a)(1) of this title, for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

(4) section 5724a(a)(3) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty;

(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C), may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter.

(Added Pub. L. 91-648, title IV, §402(a), Jan. 5, 1971, 84 Stat. 1924; amended Pub. L. 95-454, title VI, §603(b), (e), Oct. 13, 1978, 92 Stat. 1190, 1191.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, §603(b), (e), substituted “a Federal agency” for “an executive agency” in introductory text, substituted “Federal” for “executive” in cl. (1), added cl. (5), and redesignated former cl. (5) as (6).

Subsec. (b). Pub. L. 95-454, §603(b), substituted “the Federal” for “the executive”.

Subsec. (c). Pub. L. 95-454, §603(b), substituted “a Federal agency” for “an executive agency”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 4081.

§ 3376. Regulations

The President may prescribe regulations for the administration of this subchapter.

(Added Pub. L. 91-648, title IV, §402(a), Jan. 5, 1971, 84 Stat. 1925.)

EX. ORD. NO. 11589. DELEGATION OF FUNCTIONS TO OFFICE OF PERSONNEL MANAGEMENT

Ex. Ord. No. 11589, Apr. 1, 1971, 36 F.R. 6343, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Office of Personnel Management is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(a) The authority of the President under section 3376 of title 5 of the United States Code [this section] to prescribe regulations for the administration of subchapter VI, “Assignments to and from States,” of chapter 33 of that title [this chapter].

(b) The authority of the President under section 205 (a)(4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2286(a)(4)), and as affected by Reorganization Plan No. 1 of 1958 (72 Stat. 1799) [set out in the Appendix to this title], relating to the establishment and maintenance of personnel standards on the merit basis.

SEC. 2. To the extent that section 1(b) of this order is inconsistent with the provisions of Executive Order No. 10952 of July 20, 1961, as amended [formerly set out as a note under section 2271 of Title 50, Appendix, War and National Defense], section 1(b) shall control.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3372 of this title.

SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

§ 3381. Training

(a) An air traffic controller with 5 years of service as a controller who is to be removed as a controller because the Secretary has determined—

- (1) he is medically disqualified for duties as a controller;
- (2) he is unable to maintain technical proficiency as a controller; or
- (3) such removal is necessary for the preservation of the physical or mental health of the controller;

is entitled to not more than the full-time equivalent of 2 years of training.

(b) During a period of training under this section, a controller shall be—

- (1) retained at his last assigned grade and rate of basic pay as a controller;
- (2) entitled to each increase in rate of basic pay provided under law; and
- (3) excluded from staffing limitations otherwise applicable.

(c) Upon completion of training under this section, a controller may be—

- (1) assigned to other duties in the Executive agency in which the controller is employed;
- (2) released for transfer to another Executive agency; or
- (3) involuntarily separated from the service.

The involuntary separation of a controller under this subsection is not a removal for cause on charges of misconduct, delinquency, or inefficiency for purposes of section 5595 or section 8336 of this title.

(d) The Secretary, without regard to section 3324(a) and (b) of title 31, may pay, or reimburse a controller for, all or part of the necessary expenses of training provided under this section, including expenses authorized to be paid under chapter 41 and subchapter I of chapter 57 of this title, and the costs of other services or facilities directly related to the training of a controller.

(e) Except as provided by subsection (d) of this section, the provisions of chapter 41 of this title, other than sections 4105, 4107(a) and (b),¹ and 4111, shall not apply to training under this section.

(f) The provisions of this section shall not otherwise affect the authority of the Secretary to provide training under chapter 41 of this title or under any other provision of law.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 142; amended Pub. L. 96-347, §1(b), (c)(1), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 97-258, §3(a)(7), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103-226, §2(b)(1), Mar. 30, 1994, 108 Stat. 112.)

REFERENCES IN TEXT

For definition of Secretary, referred to in subsec. (a), see section 2109 of this title.

Subsecs. (a) and (b) of section 4107 of this title, referred to in subsec. (e), were struck out, and subsecs. (c) and (d) of section 4107 were redesignated (a) and (b), respectively, by Pub. L. 103-226, §2(a)(5)(B), Mar. 30, 1994, 108 Stat. 112.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103-226 substituted “4105,” for “4105(a),”.

1982—Subsec. (d). Pub. L. 97-258 substituted “section 3324(a) and (b)” for “section 529”.

1980—Subsec. (a). Pub. L. 96-347, §1(b), substituted “Secretary” for “Secretary of Transportation”.

Subsec. (c)(1). Pub. L. 96-347, §1(c)(1), substituted “in the Executive agency in which the controller is employed” for “in the Department of Transportation”.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 2(c) of Pub. L. 103-226 provided that: “The amendments made by this section [amending this section and sections 4101, 4103, 4105, 4107, 4108, 4113, and 4118 of this title and repealing sections 4106 and 4114 of this title] shall become effective on the date of enactment of this Act [Mar. 30, 1994].”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section 10 of Pub. L. 92-297 provided that: “This Act [enacting this subchapter and section 2109 of this title,

¹ See References in Text note below.

amending sections 3307, 8332, 8334 to 8336, 8339, 8341, 8344 of this title, enacting provisions set out as notes under this section and section 8335 of this title, and repealing provisions set out as a note under section 3307 of this title] shall become effective at the beginning of the ninetieth day after the date of enactment of this Act [May 16, 1972].”

REPORT TO CONGRESS

Section 9 of Pub. L. 92-297 directed the Secretary of Transportation to report to Congress no later than 5 years after May 16, 1972, concerning his operations under the amendments made by Pub. L. 92-297, including a detailed statement of the effectiveness of Pub. L. 92-297 in meeting the needs of the Air Traffic Controller career program and of the air traffic control system plus recommendations for the management of the program or the system.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3382, 3383 of this title.

§ 3382. Involuntary separation for retirement

An air traffic controller who is eligible for immediate retirement under section 8336 of this title may be separated involuntarily from the service if the Secretary determines that the separation of the controller is necessary in the interest of—

- (1) aviation safety;
- (2) the efficient control of air traffic; or
- (3) the preservation of the physical or mental health of the controller.

Chapter 75 of this title does not apply to a determination or action under this section. Separation under this section shall not become final, without the consent of the controller, until the last day of the second month following the day the controller receives a notification of the determination by the Secretary under this section, or, if a review is requested under section 3383 of this title, the last day of the month in which a final decision is issued by a board of review under section 3383(c) of this title, whichever is later. A controller who is to be separated under this section is entitled to training under section 3381 of this title. Separation of such a controller who elects to receive training under section 3381 shall not become final until the last day of the month following the completion of his training.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 142; amended Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96-347 in provisions preceding par. (1) substituted “Secretary determines” for “Secretary of Transportation determines”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as a note under section 3381 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3383 of this title.

§ 3383. Determinations; review procedures

(a) An air traffic controller subject to a determination by the Secretary under section 3381(a) or section 3382 of this title, shall be furnished a written notice of the determination and the reasons therefor, and a notification that the controller has 15 days after the receipt of the notification within which to file a written request for reconsideration of the determination. Unless the controller files such a request within the 15 days, or unless the determination is rescinded by the Secretary within the 15 days, the determination shall be final.

(b) If the Secretary does not rescind his determination within 15 days after his receipt of the written request filed by the controller under subsection (a) of this section, the Secretary shall immediately convene a board of review, consisting of—

- (1) a person designated by the controller;
- (2) a representative of the Executive agency in which the controller is employed designated by the Secretary; and
- (3) a representative of the Merit Systems Protection Board, designated by the Chairman, who shall serve as chairman of the board of review.

(c) The board of review shall review evidence supporting and inconsistent with the determination of the Secretary and, within a period of 30 days after being convened, shall issue its findings and furnish copies thereof to the Secretary and the controller. The board may approve or rescind the determination of the Secretary. A decision by the board under this subsection is final. The Secretary shall take such action as may be necessary to carry out the decision of the board.

(d) Except as provided under section 3382 of this title, the review procedure of this section is in addition to any other review or appeal procedures provided under any other provision of law, but is the sole and exclusive administrative remedy available to a controller within the Executive agency in which such controller is employed.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 95-454, title IX, §906(a)(6), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 96-347, §1(b), (c)(2), (3), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-347, §1(b), substituted “Secretary under” for “Secretary of Transportation under”.

Subsec. (b)(2). Pub. L. 96-347, §1(c)(2), substituted “the Executive agency in which the controller is employed” for “the Department of Transportation”.

Subsec. (d). Pub. L. 96-347, §1(c)(3), substituted “within the Executive agency in which such controller is employed” for “within the Department of Transportation”.

1978—Subsec. (b)(3). Pub. L. 95-454 substituted “Merit Systems Protection Board” for “Civil Service Commission”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as a note under section 3381 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3382 of this title.

§ 3384. Regulations

The Secretary is authorized to issue regulations to carry out the provisions of this subchapter.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96-347 substituted “Secretary” for “Secretary of Transportation”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as a note under section 3381 of this title.

§ 3385. Effect on other authority

This subchapter shall not limit the authority of the Secretary to reassign temporarily an air traffic controller to other duties with or without notice, in the interest of the safe or efficient separation and control of air traffic or the physical or mental health of a controller; or to reassign permanently or separate a controller under any other provision of law.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96-347 substituted “Secretary” for “Secretary of Transportation”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as a note under section 3381 of this title.

SUBCHAPTER VIII—APPOINTMENT, RE-ASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

PRIOR PROVISIONS

A prior subchapter VIII, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to part-time career employment opportunities, was redesignated as chapter 34 of this title by Pub. L. 95-454, title IX, §906(c)(1)(A), Oct. 13, 1978, 92 Stat. 1226.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1204, 1212 of this title; title 38 section 7425.

§ 3391. Definitions

For the purpose of this subchapter, “agency”, “Senior Executive Service position”, “senior executive”, “career appointee”, “limited term appointee”, “limited emergency appointee”, “non-career appointee”, and “general position” have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161.)

PRIOR PROVISIONS

A prior section 3391, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to definitions for part-time career employment opportunities, was renumbered as section 3401 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b) of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

§ 3392. General appointment provisions

(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency—

(1) in accordance with requirements established by the Office of Personnel Management, with respect to standards for career reserved positions, and

(2) after consultation with the Office, with respect to standards for general positions.

(b) Not more than 30 percent of the Senior Executive Service positions authorized under section 3133 of this title may at any time be filled by individuals who did not have 5 years of current continuous service in the civil service immediately preceding their initial appointment to the Senior Executive Service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government. In applying the preceding sentence, any break in service of 3 days or less shall be disregarded.

(c)(1) If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in

such manner as the Office may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

(A) to the extent provided under regulations prescribed by the Office, and

(B) so long as the appointee continues to serve under such Presidential appointment.

(2) An election under paragraph (1) may also be made by any career appointee who is appointed to a civilian position in the executive branch—

(A) which is not in the Senior Executive Service; and

(B) which is covered by the Executive Schedule, or the rate of basic pay for which is fixed by statute at a rate equal to 1 of the levels of the Executive Schedule.

An election under this paragraph shall remain effective so long as the appointee continues to serve in the same position.

(d) Appointment or removal of a person to or from any Senior Executive Service position in an independent regulatory commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161; amended Pub. L. 101-335, §7(a), July 17, 1990, 104 Stat. 325.)

REFERENCES IN TEXT

The Executive Schedule, referred to in subsec. (c), is set out as section 5311 et seq. of this title.

PRIOR PROVISIONS

A prior section 3392, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to the establishment of part-time career employment programs, was renumbered as section 3402 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-335 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7(b)(1) of Pub. L. 101-335 provided that: “The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [July 17, 1990].”

ELECTION BY PERSONS PREVIOUSLY APPOINTED; RETROACTIVE PERFORMANCE AWARDS

Section 7(b)(2), (3) of Pub. L. 101-335, as amended by Pub. L. 102-378, §7(a), Oct. 2, 1992, 106 Stat. 1359, provided that:

“(2) ELECTION BY PERSONS PREVIOUSLY APPOINTED.—The Office of Personnel Management shall prescribe regulations (including procedures and deadlines) under which an election under section 3392(c)(2) of title 5, United States Code (as amended by this section) may be made by any individual who—

“(A) on the date of enactment of this Act [July 17, 1990], is serving in a civilian position in the executive branch which—

“(i) is not in the Senior Executive Service; and

“(ii) satisfies section 3392(c)(2)(B) of such title 5 (as so amended);

“(B) was appointed to that position on or after November 1, 1986, and has served continuously in such position since then;

“(C) was a career appointee (within the meaning of section 3132(a)(4) of such title 5) immediately before having been so appointed; and

“(D) was not, based on such individual’s appointment to the position described in subparagraph (A), eligible to make an election under section 3392(c) of such title 5 (as then in effect).

An election under this paragraph shall be effective as of the date of appointment to the position described in subparagraph (A).

“(3) RETROACTIVE PERFORMANCE AWARDS.—If an individual elects under paragraph (2) to continue to be subject to performance awards, the head of the agency in which such individual is serving shall determine whether to grant retroactive performance awards for any fiscal years prior to fiscal year 1991 to such individual, and the amount of any such awards, without regard to the provisions of subsection (b) of section 5383 of title 5, United States Code, and subsections (b) and (c) of section 5384 of such title. Before granting an award, the head of the agency shall make a written determination that the individual’s performance during the fiscal year for which the award is given was at least fully successful, and shall consider the recommendation of the agency’s performance review board with respect to the award. No such award for performance during any fiscal year may be less than 5 percent nor more than 15 percent of the individual’s rate of basic pay as of the end of such fiscal year.”

[Pub. L. 102-378, §7(b), Oct. 2, 1992, 106 Stat. 1359, provided that: “The amendment made by subsection (a) [enacting section 7(b)(3) of Pub. L. 101-335, set out above] shall be effective as if enacted as a part of section 7 of the Thrift Savings Plan Technical Amendments Act of 1990 [Pub. L. 101-335].”]

§ 3393. Career appointments

(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from—

(1) all groups of qualified individuals within the civil service; or

(2) all groups of qualified individuals whether or not within the civil service.

(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency or commissioned officers of the uniformed services serving on active duty in such agency. The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including—

(1) reviewing the executive qualifications of each candidate for a position to be filled by a career appointee; and

(2) making written recommendations to the appropriate appointing authority concerning such candidates.

(c)(1) The Office shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the executive qualifications of candidates for initial appointment as career appointees in accordance with regulations prescribed by the Office. Of the

members of each board more than one-half shall be appointed from among career appointees. Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and knowledge of the appropriate occupational fields of the intended appointee.

(2) The Office shall, in consultation with the various qualification review boards, prescribe criteria for establishing executive qualifications for appointment of career appointees. The criteria shall provide for—

(A) consideration of demonstrated executive experience;

(B) consideration of successful participation in a career executive development program which is approved by the Office; and

(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of executive success and who would not otherwise be eligible for appointment.

(d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

(e) Each career appointee shall meet the executive qualifications of the position to which appointed, as determined in writing by the appointing authority.

(f) The title of each career reserved position shall be published in the Federal Register.

(g) A career appointee may not be removed from the Senior Executive Service or civil service except in accordance with the applicable provisions of sections 1215, 3393a, 3592, 3595, 7532, or 7543 of this title.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161; amended Pub. L. 97-35, title XVII, §1704(c), Aug. 13, 1981, 95 Stat. 758; Pub. L. 98-615, title III, §306(b)(1), Nov. 8, 1984, 98 Stat. 3220; Pub. L. 101-12, §9(b), Apr. 10, 1989, 103 Stat. 35; Pub. L. 101-194, title V, §506(b)(2), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101-280, §6(d)(1), May 4, 1990, 104 Stat. 160.)

PRIOR PROVISIONS

A prior section 3393, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1057, which related to limitations concerning part-time career employment opportunities, was renumbered as section 3403 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1990—Subsec. (g). Pub. L. 101-280 made technical correction to directory language of Pub. L. 101-194, see 1989 Amendment below.

1989—Subsec. (g). Pub. L. 101-194, as amended by Pub. L. 101-280, inserted "3393a," after "1215,".

Pub. L. 101-12 substituted "1215" for "1207".

1984—Subsec. (b). Pub. L. 98-615 inserted provision referring to commissioned officers of the uniformed services serving on active duty in such agency in provisions preceding par. (1).

1981—Subsec. (g). Pub. L. 97-35 added subsec. (g).

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 307 of title III of Pub. L. 98-615 provided that: "The amendments made by this title [enacting section 3595a of this title, amending this section and sections 3135, 3593 to 3595, 4312, 5383, and 5384 of this title, and enacting provisions set out as a note under section 3131 of this title] shall be effective following the expiration of the 90-day period beginning on the date of enactment of this Act [Nov. 8, 1984], except that the amendments made by section 304 [amending sections 3395, 3595, 7543, and 8336 of this title] shall be effective as of such date of enactment."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97-35, set out as an Effective Date note under section 3595 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3393a, 3592, 3593, 3594, 3595, 7541 of this title.

§ 3393a. Recertification

(a)(1) In order to ensure that the performance of career appointees demonstrates the excellence needed to meet the goals of the Senior Executive Service, as set forth in section 3131, each career appointee shall be subject to recertification by the employing agency in accordance with the provisions of this section.

(2) Beginning in calendar year 1991, and recurring every third calendar year thereafter, the head of an agency shall determine a time during such calendar year when the performance of career appointees in the agency shall be subject to recertification. Recertification shall not be required of any career appointee who has not been continuously employed as a senior executive for the 156 weeks preceding the time determined for the recertification. For the purposes of the previous sentence, a break in service of 6 months shall be deemed not to interrupt the 156 weeks of continuous employment.

(b) The supervising official of each career appointee shall submit to a performance review board established by the agency under section 4314 a recommendation as to whether the career appointee's performance justifies recertification as a senior executive, based on such factors as the career appointee's performance ratings for the 3 preceding years under section 4314, any award or other recognition received by the career appointee, any developmental activities of the career appointee, and any other relevant factors. The supervising official's recommendation shall reflect that official's view as to whether the career appointee's overall performance over the 3 preceding years has demonstrated the excellence expected of a senior executive in relation to the written performance requirements for the career appointee's senior executive position as established under section 4312(b). The career appointee may submit to the performance review board a statement of accomplishments and other documentation giving evidence of the quality of the career appointee's performance.

(c)(1) After considering the recommendation and other information received under subsection (b), the performance review board shall submit to the appointing authority a recommendation

as to whether the career appointee should be recertified, conditionally recertified, or not recertified as a senior executive. If the board proposes to recommend conditional recertification or nonrecertification, then the affected appointee shall be so notified and shall have the opportunity to appear before the performance review board. If the board is recommending that the career appointee be recertified, the board may also recommend that the career appointee's rate of basic pay be increased to a higher rate established under section 5382. If the board is recommending that the career appointee be conditionally recertified, the board may recommend that the career appointee's pay be reduced to the next lower rate established under section 5382. The board shall also provide to the appointing authority the recommendation and other information received under subsection (b).

(2) More than one-half of the members of a performance review board under this section shall consist of career appointees. The requirement of the preceding sentence shall not apply in any case in which the Office of Personnel Management determines that there exists an insufficient number of career appointees available to comply with the requirement.

(d)(1) If the appointing authority determines that the career appointee's performance during the preceding 3 years demonstrates the excellence expected of a senior executive, the appointing authority shall recommend to the head of the agency that the career appointee be recertified as a senior executive.

(2) If the appointing authority determines that the career appointee's performance has not demonstrated the excellence expected of a senior executive, the appointing authority shall recommend to the head of the agency that the career appointee be conditionally recertified as a senior executive or not be recertified as a senior executive.

(e)(1) If the head of the agency decides that the career appointee's performance warrants recertification as a senior executive, the career appointee shall continue in the Senior Executive Service. If a career appointee is recertified as a senior executive, the career appointee's rate of basic pay may not be reduced at the time of recertification.

(2) If the head of the agency decides that the career appointee's performance does not warrant full recertification, but does warrant conditional recertification, the career appointee—

(A) shall remain a career appointee in the Senior Executive Service;

(B) shall be subject to continuing close review of the career appointee's performance by the supervising official in coordination with an executive resources board established under section 3393, in accordance with a performance improvement plan developed by the supervising official and subject to the approval of the executive resources board;

(C) may, if the head of the agency so determines, be reduced to the next lower rate of basic pay established under section 5382; and

(D) shall be removed from the Senior Executive Service if the career appointee is not recertified as a senior executive at the end of the 12-month period following the conditional recertification.

If, at the end of the 12-month period following the conditional recertification, the career appointee is recertified as a senior executive, any reduction that was made in the career appointee's rate of basic pay under subparagraph (C) shall be restored prospectively.

(3) If the head of the agency decides that the career appointee's performance does not demonstrate that the career appointee qualifies for recertification or conditional recertification as a senior executive, the career appointee shall be removed from the Senior Executive Service in accordance with section 3592.

(f) The Office of Personnel Management shall prescribe standards and procedures to ensure consistency and fairness for the process of recertification under this section.

(Added Pub. L. 101-194, title V, § 506(a)(1), Nov. 30, 1989, 103 Stat. 1756.)

EFFECTIVE DATE

Section effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as an Effective Date of 1989 Amendment note under section 3151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3151, 3393, 3592, 3593, 3594, 7701, 8336, 8414 of this title; title 10 sections 1590, 1601; title 22 section 3945.

§ 3394. Noncareer and limited appointments

(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority.

(b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

(Added Pub. L. 95-454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1162.)

PRIOR PROVISIONS

A prior section 3394, added Pub. L. 95-437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, which related to personnel ceilings, was renumbered as section 3404 of this title by Pub. L. 95-454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3395 of this title; title 20 section 3461.

§ 3395. Reassignment and transfer within the Senior Executive Service

(a)(1) A career appointee in an agency—

(A) may, subject to paragraph (2) of this subsection, be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

(B) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

(2)(A) Except as provided in subparagraph (B) of this paragraph, a career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives writ-

ten notice of the reassignment at least 15 days before the effective date of such reassignment.

(B)(i) A career appointee may not be reassigned to a Senior Executive Service position outside the career appointee's commuting area unless—

(I) before providing notice under subclause (II) of this clause (or seeking or obtaining the consent of the career appointee under clause (ii) of this subparagraph to waive such notice), the agency consults with the career appointee on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and

(II) the career appointee receives written notice of the reassignment, including a statement of the reasons for the reassignment, at least 60 days before the effective date of the reassignment.

(ii) Notice of reassignment under clause (i)(II) of this subparagraph may be waived with the written consent of the career appointee involved.

(b)(1) Notwithstanding section 3394(b) of this title, a limited emergency appointee may be reassigned to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in such agency under such appointment in excess of 18 months.

(2) Notwithstanding section 3394(b) of this title, a limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.

(d) A noncareer appointee in an agency—

(1) may be reassigned to any general position in the agency for which the appointee is qualified; and

(2) may transfer to a general position in another agency with the approval of the agency to which the appointee transfers.

(e)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to make an initial appraisal of the career appointee's performance under subchapter II of chapter 43.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any reassignment under section 4314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(3) For the purpose of applying paragraph (1) to a career appointee, any days (not to exceed a total of 60) during which such career appointee is serving pursuant to a detail or other temporary assignment apart from such appointee's regular position shall not be counted in determining the number of days that have elapsed since an appointment referred to in subparagraph (A) or (B) of such paragraph.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1163; amended Pub. L. 98-615, title III, §304(a), Nov. 8, 1984, 98 Stat. 3218; Pub. L. 102-175, §3, Dec. 2, 1991, 105 Stat. 1222.)

PRIOR PROVISIONS

A prior section 3395, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1057, which related to nonapplicability of part-time career employment opportunities program was renumbered as section 3405 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1991—Subsec. (e)(1)(B)(ii). Pub. L. 102-175, §3(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "has the authority to reassign the career appointee."

Subsec. (e)(3). Pub. L. 102-175, §3(2), added par. (3).

1984—Subsec. (a)(2). Pub. L. 98-615 designated existing provisions as subpar. (A), inserted exception relating to subpar. (B), and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

§ 3396. Development for and within the Senior Executive Service

(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to establish such programs which meet criteria prescribed by the Office.

(b) The Office shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office finds that any agency's program under subsection (a) of this section is not in compliance with the criteria prescribed under such subsection, it shall require the agency to take such corrective action as may be necessary to bring the program into compliance with the criteria.

(c)(1) The head of an agency may grant a sabbatical to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee's development and effectiveness. A sabbatical shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel expenses (including per diem allowances) as the head of the agency may determine to be essential for the study or experience.

(2) A sabbatical under this subsection may not be granted to any career appointee—

(A) more than once in any 10-year period;
 (B) unless the appointee has completed 7 years of service—

(i) in one or more positions in the Senior Executive Service;

(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

(iii) in any combination of such positions, except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

(C) if the appointee is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for the purpose of subparagraph (B) of this paragraph.

(3)(A) Any career appointee in an agency may be granted a sabbatical under this subsection only if the appointee agrees, as a condition of accepting the sabbatical, to serve in the civil service upon the completion of the sabbatical for a period of 2 consecutive years.

(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career appointee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the agency who granted the sabbatical) the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States.

(d)(1) The Office shall encourage and assist individuals to improve their skills and increase their contribution by service in a variety of agencies as well as by accepting temporary placements in State or local governments or in the private sector.

(2) In order to promote the professional development of career appointees and to assist them in achieving their maximum levels of proficiency, the Office shall, in a manner consistent with the needs of the Government provide appropriate informational services and otherwise encourage career appointees to take advantage of any opportunities relating to—

(A) sabbaticals;

(B) training; or

(C) details or other temporary assignments in other agencies, State or local governments, or the private sector.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1163; amended Pub. L. 102-175, §4, Dec. 2, 1991, 105 Stat. 1223.)

PRIOR PROVISIONS

A prior section 3396, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1057, which related to issuance of regulations, was renumbered as section 3406 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102-175 designated existing provisions as par. (1) and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3151 of this title; title 10 sections 1590, 1601; title 22 section 3984.

§ 3397. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1164.)

PRIOR PROVISIONS

A prior section 3397, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1058, which related to reports, was renumbered as section 3407 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

A prior section 3398, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1058, which related to representation by employee organizations of employees employed on a part-time career employment basis, was renumbered as section 3408 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

CHAPTER 34—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

Sec.	
3401.	Definitions.
3402.	Establishment of part-time career employment programs.
3403.	Limitations.
3404.	Personnel ceilings.
3405.	Nonapplicability.
3406.	Regulations.
[3407.	Repealed.]
3408.	Employee organization representation.

AMENDMENTS

1995—Pub. L. 104-66, title III, §3001(a)(2), Dec. 21, 1995, 109 Stat. 734, struck out item 3407 “Reports”.

1978—Pub. L. 95-437, §3(b), Oct. 10, 1978, 92 Stat. 1058, added items 3391 to 3398, which were renumbered 3401 to 3408 by Pub. L. 95-454, title IX, §906(c)(1)(A), Oct. 13, 1978, 92 Stat. 1226, which section also substituted “CHAPTER 34” for “SUBCHAPTER VIII” in heading.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 38 section 7407.

§ 3401. Definitions

For the purpose of this chapter—

(1) “agency” means—

(A) an Executive agency;

(B) a military department;

(C) an agency in the judicial branch;

(D) the Library of Congress;

(E) the Botanic Garden; and

(F) the Office of the Architect of the Capitol; but does not include—

(i) a Government controlled corporation;

(ii) the Tennessee Valley Authority;

(iii) the Virgin Islands Corporation;

(iv) the Panama Canal Company;

(v) the Federal Bureau of Investigation, Department of Justice;

(vi) the Central Intelligence Agency; and

(vii) the National Security Agency, Department of Defense; and

(2) “part-time career employment” means part-time employment of 16 to 32 hours a week (or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of